



POLICE DEPARTMENT

March 30, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant William Lewis  
Tax Registry No. 885949  
Fleet Services Division  
Disciplinary Case Nos. 82103/06, 82873/07 & 83810/08

The above-named member of the Department appeared before me on November 14, 17, 18, 19 and December 11, 2008 as well as January 8 and 9, 2009, charged with the following:

Disciplinary Case No. 82103/06

1. Said Sergeant William Lewis, while assigned to the 120 Precinct, on or about and between September 1, 2004 to May 3, 2006 did wrongfully purchase and owned real estate for rental purposes within said Officer's Precinct of assignment.

P.G. 203-13 – Page 1, Paragraph 5 – FINANCIAL RESTRICTIONS  
PROHIBITED ACTS  
GENERAL REGULATIONS

2. Said Sergeant William Lewis, while assigned as indicated in specification number one on or about and between September 1, 2004 and May 3, 2006, having changed said Sergeant's residence, did fail and neglect to notify his Commanding Officer and failed to submit an official form indicating a Change of Name, Residence or Social Condition, as required.

P.G. 203-218[*sic*]<sup>1</sup> – Page 1, Paragraph 3 – RESIDENCE REQUIREMENTS  
GENERAL REGULATIONS

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<sup>1</sup> Should read P.G. 203-18

Disciplinary Case No. 82873/07

1. Said Sergeant William Lewis, while assigned to the 120 Precinct, on or about and between August 1, 2006 and August 31, 2006, did wrongfully and without just cause engage in off-duty employment without authority or permission to do so.

P.G. 205-40, Page 1, Paragraph 1 – OFF DUTY EMPLOYMENT  
PERSONNEL MATTERS

Disciplinary Case No. 83810/08

1. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about and between January 1, 2006 and March 10, 2008, wrongfully employed individuals for the purpose of engaging in business dealings on his behalf with establishments located within his precinct of assignment, in conflict with the proper discharge of his official duties. (*As amended*)

New York City Charter, Chapter 68, Conflicts of Interest 2604(b) (2)

2. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about and between January 1, 2006 and March 10, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully employed individuals for the purpose of engaging in business dealings on his behalf with establishments located within said Officer's precinct of assignment. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–  
PROHIBITED CONDUCT

3. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about and between January 1, 2006 and March 10, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully employed individuals for the purpose of engaging in business dealings on his behalf with establishments that participated in illegal gambling operations. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–  
PROHIBITED CONDUCT

4. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about and between January 1, 2006 and March 9, 2008, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant had knowledge that a relative was employed at an establishment located within the parameters of his enforcement duties and said Sergeant did not inform any Department officials. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–  
PROHIBITED CONDUCT

5. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about December 11, 2007, wrongfully and without authorization divulged and discussed official Department business, to wit: said Sergeant divulged to an individual known to the Department that there was an undercover police operation being conducted at a location which was, in fact, under investigation for illegal gambling activity. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT—  
PROHIBITED CONDUCT

6. Said Sergeant William Lewis, assigned to the 120<sup>th</sup> Precinct, on or about June 11, 2007, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant attempted to collect debts from an individual known to the Department on behalf of a third party in an intimidating manner. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT—  
PROHIBITED CONDUCT

The Department was represented by Krishna O’Neal, Esq., and Nancy Slater, Esq., Department Advocate’s Office, and the Respondent was represented by Eric Franz, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification No. 2 in Disciplinary Case No. 82103/06 and Specification No. 1 in Disciplinary Case No. 82873/07; and he entered a plea of Not Guilty to all the remaining subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review.

DECISION

Disciplinary Case No. 82103/06

The Respondent is found Guilty of Specification No. 1. Having pleaded Guilty to Specification No. 2, the Respondent is found Guilty.

Disciplinary Case No. 82873/07

The Respondent, having pleaded Guilty, is found Guilty of Specification No. 1.

Disciplinary Case No. 83810/08

Specification No. 1 is dismissed. The Respondent is found Guilty of Specification Nos. 2 & 4; and found Not Guilty of Specification Nos. 3, 5 & 6.

INTRODUCTION

This case involves the analysis of a number of diverse factual and legal issues. Ten witnesses testified over the course of seven trial days, creating a transcript of over 1,200 pages. In addition, there were a number of exhibits in evidence. Written summations encompassing over 100 pages (much of it single-spaced) comprise an additional part of the record. The length of this decision was necessitated by the sheer size of this case.

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#### SUMMARY OF EVIDENCE PRESENTED

##### The Department's Case

The Department called Detective Victor Crespo, Deputy Inspector Daniel Carione, Lieutenant Peter Sheehan, Lieutenant Shawn Charlson, Undercover Officer No. 5601, Police Officer Robert Santangelo, Lieutenant Joseph Murray and the Respondent. The Department also called the Respondent as their witness. Offered into evidence by the Department were an audiocassette and transcription of an interview of [REDACTED] DX 1A and 1B; two cellular telephone certifications, DX 2A and 2B; three spreadsheet documents constructed using telephone records of the cellular phone numbers of [REDACTED] [REDACTED] Christopher Shaffer and the Respondent as DX 3, 4 and 5, respectively; and [REDACTED] three revised spreadsheet documents for the aforementioned individual's phone records, DX 3A, 4A and 5A.

##### Detective Victor Crespo

Crespo has been a member of the Department for six and a half years. He is presently assigned to Group 33 of the Internal Affairs Bureau ("IAB") where he investigates various types of misconduct committed by members of the service.

Crespo testified that in June of 2007 he was assigned to investigate a case involving the Respondent. He said that the case originated from the IAB Command Center which received a complaint from B [REDACTED] regarding an incident that occurred inside of [REDACTED] Bagel with his stepfather [REDACTED] and the Respondent. Crespo responded to [REDACTED] Bagel in Staten Island in order to conduct interviews. He determined that [REDACTED] and [REDACTED] both owned [REDACTED] Bagel and that on June 11, 2007, as [REDACTED] was working, he was approached by the Respondent who was accompanied by a delivery man for a distribution company called Richmond Wholesale. The Respondent gave [REDACTED] invoice and demanded that he pay a past due balance owed to Richmond Wholesale. Crespo stated that [REDACTED] felt that he was being intimidated by the Respondent.

As part of his investigation, Crespo conducted a background check of the Respondent. He determined that he was a supervisor, the Conditions Sergeant at the 120 Precinct, where he supervises officers assigned to address quality of life matters such as "underage drinking, prostitution...State Liquor Authority enforcement within commercial establishments regarding bars." He also learned that the Respondent worked the midnight shift and had two off-duty employments on file with the Department, one with Richmond Wholesale and another with All Platinum Pest Control. Crespo explained that Richmond Wholesale is in the business of selling sundries typically found in convenience stores such as "cigarettes, potato chips, soda and water" and that the Respondent's duties there included taking orders and making deliveries. With respect to All Platinum Pest Control ("All Platinum"), the Respondent owned this company. He had been employed by Richmond Wholesale since 2005 and owned All Platinum from around the same time. Crespo determined that both employments were authorized off-duty employments at the

time of the investigation.

Crespo also investigated [REDACTED] and [REDACTED]'s relationship with Richmond Wholesale ("Richmond"). He determined that [REDACTED] is a customer of Richmond and deals with primarily [REDACTED] or [REDACTED], the principal owners of the company. When [REDACTED] told the Respondent that he only deals with [REDACTED] the Respondent said that he did not care and that he had to pay the outstanding balance.

Crespo said that he conducted interviews of [REDACTED] and [REDACTED] at [REDACTED] Bagel on or about June 16, 2007. The interviews were recorded using a tape recorder and Crespo verified that the recorder was functioning correctly and also verified the contents of the tape to make sure that it was a complete recording of the interview that he conducted. Crespo also stated that he reviewed the tape and made necessary corrections to the associated transcription of the interview.

On *voir-dire* examination of the tape, Crespo testified that after the interview he took the tape back to the office and "kept it in my cabinet" and that the tape never left the cabinet unless he had to produce it to the Assistant Department Advocate ("Advocate") or for trial. The tape was not vouchered but logged in a tape log. Crespo prepared a worksheet regarding the tape but acknowledged that it did not state that the interviews were recorded. Crespo had listened to the cassette tape and testified that it is an accurate reflection of his conversation with [REDACTED] and [REDACTED].

On continued direct examination, Crespo said: "Basically, Mr. [REDACTED] had told me, had stated to me that on the day of the incident when [the Respondent] came into the store, he demanded that a debt be paid to Richmond Wholesale. He stated to him that he works directly with [REDACTED]...[the Respondent's] reply, according to Mr. [REDACTED] was, 'I don't

care about [REDACTED]" Crespo said that the Respondent then made a telephone call and [REDACTED] heard him say that [REDACTED] as a Paki working here." [REDACTED] explained that he perceived the word "Paki" to be "an extremely offensive word" and disparaging to his culture. [REDACTED] told Crespo that later that evening he telephoned [REDACTED] and told him that "this is not the mafia" and expressed his displeasure in the Respondent appearing at his business to collect a debt. [REDACTED] apologized to him and stated that the Respondent's presence at [REDACTED] Bagel was not at his direction and that he "should never have went there to collect the debt."

Crespo explained that both [REDACTED] and [REDACTED] were interviewed. He said he spoke with [REDACTED] first in the presence of [REDACTED] and then spoke to [REDACTED]. He reiterated that it was [REDACTED] who stated: "This is not the mafia. Where did this guy come from? This is not the way we do business. I left Pakistan for the same problem over there...Paki is a very bad word...." He also said that it was [REDACTED] who expressed that he felt "very nervous, very intimidated, and stated to me that [the Respondent] came in there like he was a big tough man to collect a debt." The encounter between the Respondent and [REDACTED] ended when [REDACTED] telephoned [REDACTED] complaining about the Respondent's presence in the store. [REDACTED] also had a three-way telephone conversation with [REDACTED] and [REDACTED] expressing his displeasure about the Respondent. During the call, [REDACTED] stated, "I told you from day one I don't like him...." Crespo found that [REDACTED] had prior dealings with the Respondent because he used to perform extermination services in [REDACTED] Bagel and that he was not satisfied with the job the Respondent performed, did not care for his demeanor or "anything about him."

[REDACTED] also, had prior dealings with the Respondent. He told Crespo that "a while back [the Respondent] came into the store, [REDACTED] Bagel, to conduct an

extermination. It was Mr. [REDACTED]'s belief regarding the extermination that he owed the Respondent \$20 for the service. At the conclusion of the extermination, he, Mr. [REDACTED] stated to [the Respondent], 'how much do I owe you?' And according to Mr. [REDACTED] [the Respondent's] response was 'you don't owe me anything, but you owe Richmond Wholesale' and pulls out an invoice and shows it to Mr. [REDACTED]" At this point, [REDACTED] did not want to use the Respondent as his exterminator because "...he thought [the Respondent] would come into the store...to spy on the inventory, to see what [they] didn't have, what [they are] short on regarding cigarettes, soda, water, whatever Richmond Wholesale provides...this was the opportunity [the Respondent] used when conducting extermination to view the items that they did not and did have in the store...."

Crespo testified that he conducted an investigation regarding [REDACTED] claim that he felt intimidated by the Respondent's attempt to collect a debt in his store. He said that he met with [REDACTED] in December 2007 and March 2008 to set up controlled telephone calls to Richmond in order to determine why the Respondent was sent to [REDACTED] Bagel.

Crespo determined that Richmond employees were aware that the Respondent was going to [REDACTED] Bagel on the day of Ali's encounter with him. Referring to the March 2008 controlled telephone call, Crespo testified that Beickert told Ralph that he did not want the Respondent coming to [REDACTED] Bagel anymore. He told Ralph that the Respondent had intimidated and scared [REDACTED] and explained that he would pay Richmond what was owed but that he wanted a guarantee that the Respondent would not come to the store. [REDACTED] was unwilling to make that guarantee.

Crespo explained that the allegation was substantiated because the two controlled telephone conversations corroborated [REDACTED]'s June 11, 2007 complaint. Crespo further

explained that in one of the controlled telephone calls, a conversation took place between [REDACTED] and [REDACTED] the collections manager for Richmond. [REDACTED] told [REDACTED] not to send the Respondent to the store and [REDACTED] said that he would not promise not to send him.

In early December of 2007, Crespo acknowledged being assigned a second investigation concerning the Respondent. Specifically, Sergeant (now Lieutenant) Charlson of Vice Enforcement ("Vice") had contacted IAB alleging that a confidential informant [REDACTED] told him that the Respondent called him to tell him about an undercover operation being conducted at [REDACTED] and [REDACTED]'s and that they were targeting Chris Shaffer. The investigation for this matter spanned the period of December of 2007 to the end of June of 2008.

Crespo said he met with [REDACTED] and members of Vice to conduct interviews. Interviews were also conducted of members of the Respondent's conditions team and of the Respondent. Civilians employed at [REDACTED] and [REDACTED]'s were interviewed as well. He said that [REDACTED] is located at [REDACTED] and [REDACTED]'s is at [REDACTED] and the subjects of the undercover operation were Chris Shaffer and [REDACTED]. Shaffer owns [REDACTED] and [REDACTED]'s.

Crespo learned from [REDACTED] that he owns the building at [REDACTED] which houses [REDACTED]. [REDACTED] had received numerous complaints from his tenants about [REDACTED] and also knew of illegal gambling taking place inside of that bar and he volunteered to work with Vice. At the commencement of his investigation, in December of 2007, Crespo found that [REDACTED] had been working with Vice for over a year.

Crespo communicated with [REDACTED] on "several occasions" during his

investigation. He was also assisted by Deputy Inspector Carione, his commanding officer. Crespo learned from [REDACTED] that on December 8, 2007, he brought an undercover Vice officer into [REDACTED]s. This undercover officer and Shaffer entered into a bet via telephone for \$200. The undercover lost the bet and was supposed to pay Shaffer the money on December 11, 2007. Crespo testified that [REDACTED] claimed he received a phone call on December 11, from the Respondent informing him that an undercover operation was being conducted at [REDACTED]s and that Shaffer's arrest was impending. On December 11, 2007, the undercover officer went to [REDACTED]s to pay Shaffer the \$200 and also entered into another wager with him for an upcoming football game. Crespo testified that the next day, December 12, [REDACTED] received a telephone call from Shaffer accusing him of bringing the undercover officer into his bar. The undercover officer told Crespo that he too received a call from Shaffer stating that "Chris Shaffer no longer wanted to do illegal bets."

Crespo said that his investigation revealed that [REDACTED] purchased [REDACTED] in 2002. One evening, the Respondent appeared at the bar and introduced himself to [REDACTED] as the precinct's conditions sergeant. In 2003 or 2004, [REDACTED] sought to sell [REDACTED] and placed an advertisement in a local newspaper. Shaffer and [REDACTED] responded to the advertisement and, ultimately, Shaffer bought [REDACTED] from [REDACTED]. As payment, Shaffer gave [REDACTED] about \$60,000 in cash and a gyrocopter. He paid the balance due to [REDACTED] on a monthly basis. At a later point, Shaffer recommended an exterminator to [REDACTED] to "deal with his bug problems." The exterminator was the Respondent, and [REDACTED] realized that he had previously met him in 2002 inside of [REDACTED]. Crespo testified that the Respondent

conducted extermination services for [REDACTED] and [REDACTED]'s.

Crespo stated that [REDACTED] is a retired member of this Department and formerly worked under the Respondent on his conditions team. He now works as a bouncer at [REDACTED], [REDACTED]'s, [REDACTED] and a bar in Manhattan. With the exception of the latter, all of the aforementioned bars are located in the 120 Precinct.

[REDACTED] worked in the Respondent's team for at least a year until he retired.

Crespo testified that Official Department Interviews were conducted of Lieutenant Sheehan, the Respondent's supervisor; Officer Santangelo, the Respondent's driver; Officer Weinstein and Officer Putney.

On March 6, 2008, Shaffer was arrested as a result of the December 2007 illegal wager that he placed with the undercover. Crespo and his team debriefed him to see what information he knew about the Respondent and to determine if the Respondent disclosed information about the undercover Vice operation. During the debriefing, Crespo learned that the Respondent's sister, Dawn Lewis, was employed as a bartender at [REDACTED]. Shaffer initially claimed that he had no contact with the Respondent; however, the Respondent's cell phone number was found to be stored in his cell phone. Shaffer thereafter admitted to having regular contact with the Respondent for the purpose of extermination services in his bars.

During the investigation, [REDACTED] claimed responsibility for providing the information to Shaffer about the undercover Vice operation. He claimed that when he was working as a bouncer in Manhattan, he was approached by Shaffer who expressed concern about the individual who placed a bet with him—the undercover officer. [REDACTED] said that it was at this meeting that he introduced the idea of the presence of the

undercover officer. [REDACTED] informed Crespo that the leak of the information occurred on the morning of December 11, 2007. Crespo reviewed the telephone records of [REDACTED] Shaffer and the Respondent and found there to be phone activity between the parties on that day. Crespo testified that according to [REDACTED]'s story, Shaffer approached him after December 11, 2007; however, the allegation regarding the disclosure of the information was on the morning of December 11, 2007. He further stated that [REDACTED] was admitting that he was the reason Shaffer knew of the undercover operation; however, Crespo said the meeting with [REDACTED] and Shaffer occurred after the information about the undercover operation had already been leaked.

Cucco told Crespo that "Mr. Shaffer usually does not gamble illegally, even though he takes bets over the phone."

Crespo examined telephone records during his investigation, to "corroborate the information that Mr. [REDACTED] provided" regarding the leak of information. He submitted subpoenas for the cell phone records of the Respondent, Shaffer and [REDACTED]. [REDACTED] had provided all of the telephone numbers and a request was made to the Deputy Commissioner of Legal Matters for an emergency subpoena, due to the fact that the Respondent had filed an application for retirement. The requested records and accompanying certifications were sent to Group 7, the computer crimes unit of IAB. There, the telephone records were placed into a "user-friendly database to break down the phone numbers in spreadsheet that is more readable for the investigator based on the date and numbers requested." Crespo provided the Group 7 personnel with the dates and numbers he needed broken down and he received a report. He also had an opportunity to view the actual phone records at the Group 7 office, which had been e-

mailed there from the respective telephone companies. He analyzed the user-friendly spreadsheets generated and compared them to the actual information received from the telephone companies.

When shown DX 3, Crespo recognized it to be [REDACTED] s cell phone activity, DX 4 to be Shaffer's cell phone activity, and DX 5 to be the Respondent's cell phone activity. He used all three exhibits to analyze the telephone records and made notations on the documents pertaining to the specific time and date of the alleged information leak.

On *voir-dire* examination of the three exhibits, Crespo acknowledged that the documents were spreadsheets not in the same format as what was received from the telephone company. Crespo agreed that he reviewed the original phone records and that they were large. Crespo stated that DX 5, the spreadsheet of the Respondent's phone activity, relates to the number ending in 9982 and not 9981.

Crespo reviewed the spreadsheet breakdowns of the phone numbers to confirm the information supplied by [REDACTED] about the Respondent leaking information regarding the Vice operation. He noted that the Respondent's phone records, DX 5, revealed "...that on December 11, 2007 at 1144 hours [the Respondent] has an outgoing call to... [REDACTED], for a duration of five minutes and 14 seconds." Crespo found this significant because it corroborated [REDACTED]'s claim that the Respondent telephoned him on the morning of December 11, 2007 and disclosed information. Crespo testified that the phone records also reflected the calls that [REDACTED] claimed took place between himself and Shaffer on December 8, 2007, specifically, at 4:04 pm when [REDACTED] called Shaffer, and then at 4:07 pm when Shaffer called [REDACTED]. Crespo noted that he reviewed the Vice case file pertaining to the undercover operation which reflected that

the undercover officer was in [REDACTED] on December 8 at 3:30 pm and that the undercover officer reported that [REDACTED] and Shaffer spoke on the phone. DX 3, [REDACTED]'s phone records, reflects this telephone call at 4:04 pm on December 8. With respect to telephone activity on December 11, the day that it is alleged that the Respondent leaked the information about the Vice operation, the Respondent's phone records, DX 5, indicate a call between the Respondent and [REDACTED] at 11:44 am.

Crespo said that it was an outgoing call from the Respondent to [REDACTED] lasting five minutes and 14 seconds. He noted that DX 3 also reveals this telephone call. Similarly, he said that DX 4, Shaffer's cell phone records, also has an 11:44 am incoming phone call from the Respondent on this date. He concluded that the Respondent conducted a three-way call between himself, [REDACTED] and Shaffer. In his interview, [REDACTED] never said that he was aware that a three-way call was taking place.

Crespo testified that on December 12, 2007, Shaffer's phone records, DX 4, indicate an incoming call from the Respondent at 1:37 pm. The significance of this phone call was that [REDACTED] claimed to receive a call from the Respondent on this date and felt that the purpose of the phone call was for the Respondent to "feel him out for information regarding the events that occurred on December 11, 2007...". [REDACTED] basically stated that he felt that the Respondent was attempting to probe for information to determine if Mr. [REDACTED] did, in fact, send the undercover on that Saturday, December 8, 2007." In response to the Court's inquiry, Crespo said that this was a conversation between [REDACTED] and the Respondent and that on that day [REDACTED]'s phone records also showed this phone call indicating a possible three-way call again. Both of the calls were ten minutes in duration. Crespo believed that it was a three-way

call because of both [REDACTED] and Shaffer receiving calls from the Respondent. In reviewing the phone records, there appeared to be two three-way phone calls between the Respondent, Shaffer and [REDACTED]. One was on December 11, 2007, at 11:44 am and another on December 12, 2007, at 1:37 pm.

When asked if there were any other telephone calls of significance reflected in the records, Crespo testified that DX 4 reflects a conversation between the Respondent and Shaffer on March 7, 2008 at 7:48 pm for four minutes. The significance of this call was that during an Official Department Interview conducted of the Respondent on March 10, 2008, he initially claimed that he had no phone contact with Shaffer and then said that he did a long time ago. Crespo noted that Shaffer was arrested on March 6, 2008, for illegal gambling.

Crespo testified that during his investigation, he interviewed [REDACTED] three times and had "several phone contacts." [REDACTED] provided Crespo with specific dates regarding conversations with the Respondent and Shaffer. The dates that were provided were generally consistent with the telephone records; however, during the second interview the dates "were off by one date." During the third interview [REDACTED] corrected the dates.

On cross-examination, Crespo said that the testimony that he offered during this proceeding was based upon personal knowledge and to the best of his recollection. He indicated that he thoroughly reviewed paperwork, interviewed witnesses and reviewed evidence as part of his investigation. He agreed that paperwork needs to be accurate and prepared carefully. He also acknowledged that investigations need to be conducted objectively, and when asked if he is supposed to conduct investigations objectively,

replied, "To the best of my knowledge." Crespo stated that when performing investigations, he tries to obtain facts and be fair and impartial.

Crespo agreed that he reviewed DX 3-5 very carefully but "didn't compare it specifically." He explained that the phone records were put into a spreadsheet format by a detective from Group 7 based upon the dates and times that he wanted identified.

Crespo acknowledged that he indicated in a memo a possible three-way call based upon seeing contact between the Respondent [REDACTED] and Shaffer simultaneously.

Regarding DX 5, the Respondent's cell phone records, Crespo said there were no single telephone calls between the Respondent and Shaffer on that document. He agreed that he checked records for December 11, 2007 and saw a phone call to [REDACTED] and that

[REDACTED]'s phone record also showed this call. Crespo said that checking both ends of a phone call, incoming and outgoing, is a commonly employed investigative technique. He agreed that DX 5, however, showed no calls between the Respondent and Shaffer despite the fact that Shaffer's phone record showed contact. Crespo said that because he was in a rush, he never called Verizon to ask if a three-way call took place.

Crespo investigated the Respondent from January of 2007 to June of 2008. He explained that it was not until he was assigned to Group 33 of IAB that he received a case involving the Respondent for an incident in 2005.

Crespo received the phone records in March. He was aware that he would be offering testimony about his investigation at trial and that he knew the Respondent's case was a "termination case." When asked about how much time he spent checking with Verizon about the possibility of the three-way calls, Crespo said, "Not much time." He said that he only got the certifications for the records from the phone companies. He

agreed that considerable work was done for the phone records and that emergency subpoenas were requested but no calls were made to ask why one person's phone record showed a call that was absent from the other party's record.

Crespo testified that the phone contact that he identified between the Respondent and Shaffer was significant because "it corresponds with the dates and times Mr.

[REDACTED] states that the information was leaked." He acknowledged that it was important to find out if the Respondent had contact with Shaffer and that he believed the Respondent leaked information to [REDACTED]

Crespo acknowledged testifying that at 11:44 am on December 11, 2007, the Respondent called Shaffer and [REDACTED] on a three-way call, but said that the "LUDS<sup>2</sup> and tolls revealed there was a possible three-way call. I said LUDS and tolls revealed. I am telling you Mr. [REDACTED] informed me that [the Respondent] called him."

He found this call to be significant because he believed that this was when the Respondent leaked the confidential information about the Vice operation. Crespo was asked about the discrepancy regarding the phone call between the Respondent and Shaffer where the call is absent from the Respondent's record but present on Shaffer's record. He said that he did not reconcile the discrepancy because it was a "step that I did not find relevant based on my review of the Vice case file." He admitted that he made no effort to reconcile the discrepancy. He agreed that DX 3-5 were exhibits that were constructed by him.

In examining RX B, Crespo acknowledged that "column E" of page 772 indicates dates and time periods that phone calls are either made or received, from the period of December 8, 2007 at 2:43 am to December 8, 2007 at 3:09 pm. Crespo admitted to

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<sup>2</sup> Local Usage Details (phone records)

previously testifying that Shaffer called the Respondent at 8:55 am on December 8. He also said that he testified that the Respondent called Shaffer on December 11, 2007, at 11:44 am, and on December 12, 2007, at 7:29 am Shaffer called the Respondent. He also agreed that DX 3 indicates that [REDACTED] called the Respondent on December 12, 2007, at 7:29 am.

Crespo wrote a report, worksheet 73, as part of his investigation indicating that [REDACTED] called the Respondent at the exact same time Shaffer called him. He said it "might have" struck him as odd that two people involved in the investigation called the Respondent at the same time. Crespo stated that it was his "main point to determine phone contact between [the Respondent] and Mr. [REDACTED] based on my interview with Mr. [REDACTED]."

Crespo was asked "...when you see something that seems to defy common sense, do you ignore it or do you investigate it?" He responded, "I document it as it's written here" and then said that he found no relevance in the fact that the Respondent received phone calls from both the target, Shaffer, and the confidential informant, [REDACTED]. Regarding DX 3-5, Crespo said that they are spreadsheets that were generated from the phone records. He did not compare or reconcile the spreadsheets with the actual phone records. He indicated that a detective from Group 7 generated the documents in his presence, stating that when he was told that IAB was in receipt of the phone records, he went to Group 7 and informed the detective there about the case and what dates and times he needed identified. Crespo said that the fact that [REDACTED] and Shaffer called the Respondent at the same time early in the morning was odd but not relevant to the case. He never documented that this was a reason for a need to further "follow-up" on the

phone records.

With regard to his testimony that the Respondent called Shaffer at 1:37 pm on December 12, Crespo acknowledged saying that this was a possible three-way call and agreed that he made no efforts to verify if it was, in fact, a three-way call.

Regarding DX 3-5, Crespo said that he made notations on these telephone spreadsheets that Shaffer called the Respondent on December 14 at 8:02 am, and that [REDACTED] called the Respondent at the same time. He admitted that the documents reflect two different people calling the Respondent at exactly the same time, on the same date, and that he did not do any follow-up work or make any notations to reconcile this. In response to the Court's inquiry, Crespo indicated that both the phone records, for [REDACTED] and Shaffer, show calls at the same time. On December 27 at 5:30 pm, Crespo noted on DX 4 that Shaffer called the Respondent.

On worksheet 73, Crespo said that he wrote that Shaffer called [REDACTED] on January 5, 2008 at 2:28 am. He also wrote that the Respondent called Shaffer at 3:04 pm on that date. In response to the Court's questioning, Crespo said that the call is noted in his worksheet and the source of his information for writing this was the Penlink phone spreadsheet records. He also said that he wrote on the worksheet that the Respondent called Shaffer at 2:05 am.

Crespo found the March 7, 2008 phone call to be significant because at the Respondent's Official Department Interview on March 10, 2008 the Respondent claimed not to have had phone contact with Shaffer in a long time. In referring to worksheet 73, Crespo acknowledged that he was aware of a four-minute controlled phone call between [REDACTED] and the Respondent at 7:48 pm on March 7, 2008. He admitted to knowing

about the content of this phone call and knew that it was recorded. Confronted with the fact that he testified on direct examination that the Respondent had a phone conversation with Shaffer at the exact same time as the [REDACTED] phone call on March 7, 2008 at 7:48 pm, Crespo said that he did not consider the possibility that the telephone records that he was relying upon could be faulty.

Crespo said that he was never told that he was not authorized to look into the telephone records more closely. He said that his investigation involved personnel from both IAB and Vice, two separate entities. At the request of his commanding officer, he made attempts to put GPS tracking devices on the Respondent's car, acknowledging that most of the steps that he took in his investigation were at the direction of his commanding officer. He also said that he received a memo saying that cameras in the vicinity of [REDACTED]

[REDACTED] and [REDACTED]'s should be checked; however, it was never done. Interviews were conducted of both civilians and members of the service, including members of the Respondent's conditions team. Crespo said that Officers Weinstein, Putney and Santangelo were interviewed, in addition to Lieutenant Sheehan. Officers Uske and Epstein, also members of Respondent's conditions team, were not interviewed.

Regarding the undercover operation at the bar in the fall of 2007, Crespo agreed that the Respondent had to have been told at some point that no enforcement is to be conducted in that area, including SLA enforcement. Crespo agreed that if SLA violations ("SLAs") were issued from September 2007-December 2007, he would have been aware of it; however, he admitted that he did not review SLAs for that time period. When asked if he believed it was important to check to see if enforcement activity was conducted at bars that the Respondent would have been told to stay away from, Crespo said "No."

Crespo had numerous interviews with [REDACTED] He learned that [REDACTED] had served as a confidential informant for Vice in the past but could not recall if he had previously served as a confidential informant for the FBI regarding a mortgage company linked to organized crime. Crespo was questioned regarding the reliability of [REDACTED] and whether or not he properly investigated his background to gauge the credibility of the information that he provided. Crespo testified, "I rely on Vice who had stated to me that he had used Mr. [REDACTED] on numerous occasions and he had corroborated much of what they had discovered." Asked if he conducted any independent background investigation on [REDACTED] Crespo said that he found [REDACTED] reliable because "his information corroborated with the LUDS and tolls...therefore, I found him reliable." He performed some computer checks on [REDACTED] including credit and DMV checks. He admitted that he never checked anywhere to see if there were articles written about [REDACTED] being involved in organized crime. Crespo said that he believes that it is important to be aware of the backgrounds of confidential informants.

Crespo agreed that there were three ways which an individual may enter the informant program; in satisfaction of, or as a penalty associated with a criminal action, for civic duty, or for compensation. Crespo did not recall the manner in which [REDACTED] was signed up, but when shown a document, he recalled that it was for compensation and acknowledged that this meant that [REDACTED] had a desire to benefit from his cooperation as an informant.

Crespo learned from [REDACTED] that he owned the premises which housed [REDACTED] [REDACTED] at [REDACTED] He reiterated that [REDACTED] sold the bar to Shaffer and [REDACTED] and that they were unable to pay for the bar in full, and that they were not

current in their payments to [REDACTED] At one point, Raddicone offered to become partners with Shaffer because he was not receiving payments from Shaffer for the bar. Crespo testified that [REDACTED] did serve as a confidential informant regarding matters beyond [REDACTED] and [REDACTED]'s but he was not familiar with the particulars. He said he reviewed the Vice case file and did background checks on [REDACTED]

He indicated that [REDACTED] provided information to Vice regarding illegal gambling. Crespo learned from Vice that [REDACTED] provided information about Shaffer and [REDACTED]. He also learned that [REDACTED] introduced Shaffer to an undercover officer from Vice for the purpose of seeing if Shaffer could be arrested for illegal activity. He was not sure if [REDACTED] offered his assistance to Vice to "get Chris Shaffer." Crespo said that his commanding officer at the time, Carione, asked [REDACTED] if he had an "axe to grind" or a vendetta against Shaffer due to the fact that he owed him money.

[REDACTED] replied in the negative. That was the extent of the questioning of [REDACTED] regarding any potential biases he had, and his word was accepted. He could not recall if he prepared a worksheet regarding [REDACTED]'s credibility or motives, saying "You would have to ask the Captain" and then conceded that he did not personally make any notations about [REDACTED]'s reliability. Crespo said that he was the one who authored the worksheets relating to the interviews of [REDACTED] and that he is not aware of any other worksheets for his interviews existing. He also stated that, to his knowledge, there are no worksheets which address [REDACTED]'s motives as an informant.

While Crespo was aware of the fact that [REDACTED] and the Respondent had a falling out, he had no recollection of ever documenting it. The falling out stemmed from performing contracting work in the Respondent's bathroom, specifically, tile work.

[REDACTED] told Crespo that the Respondent was displeased with the tile work and as a result, had to give him a refund. This was something that happened in the past between the Respondent and [REDACTED]. Upon inquiry by the Court, Crespo said that the falling out occurred before the investigation and "might have been [in] 2005." After reviewing his case file to refresh his recollection, Crespo said there were no worksheets about [REDACTED] performing the tile work for the Respondent. After being shown a document by Respondent's counsel, Crespo agreed that [REDACTED] estimated the falling out happened at the end of 2006.

Crespo was not present at the Respondent's March 10, 2008 Official Department Interview. He did, however, read a transcription of it and agreed that he learned that "[REDACTED] had destroyed his house...." Crespo explained that the falling out between the Respondent and [REDACTED] did not influence his determination in gauging [REDACTED]'s credibility because "Mr. [REDACTED] stated to me that after a while he just let it go because [the Respondent] got his money back...the friendship continued according to Mr. [REDACTED]" Crespo accepted [REDACTED]'s word. It was also known that [REDACTED] had been arrested for felony assault; however, not much research was done regarding this.

Crespo acknowledged that a complaint received on August 14, 2007 commenced an investigation which included the undercover Vice operation. Regarding the Vice paperwork, Crespo said that if he saw errors in it, he would have brought it to someone's attention. He also said that the Vice paperwork refreshed his recollection that on August 21, 2007, a request was made that no enforcement be conducted at [REDACTED]. Despite the fact that Santangelo of the Respondent's conditions team was subject to an

Official Department Interview by Crespo, he never questioned him about why he issued SLAs “to the bar, to [REDACTED]’s” on October 4, 2007. During the course of his investigation, no one ever told Crespo that the Respondent’s conditions team was issuing SLAs despite the fact that they were not supposed to be there. He also never thought to check to see if any enforcement was being conducted at the bars.

[REDACTED] was signed up as a confidential informant on November 20, 2007. Crespo agreed that it took “about seven attempts” to get him signed up. Subsequently, arrests were made for promotion of gambling inside of [REDACTED]. While the names of those arrested were contained in Crespo’s investigative file, he was unable to recall exactly who was arrested. During an interview of [REDACTED] it was discovered that [REDACTED] Shaffer’s girlfriend, had told [REDACTED] that she recognized a person who was present in the bar to also have been present when she was arrested. According to [REDACTED] this was one of the things that made Shaffer suspicious of an undercover operation. [REDACTED] was never interviewed, while Shaffer was. Crespo claimed that he never offered to help Shaffer with his criminal matter in exchange for assisting the investigation into the Respondent, rather it was Carione. He agreed that Carione made a promise to help Shaffer if he helped make a case against the Respondent. Crespo said that he is “not entirely” familiar with the Patrol Guide, but that one is required to be familiar with it “[t]o the best of our knowledge...” He said that it was “mostly the job of inspections” to enforce the Patrol Guide and ensure that members of the service adhere to it. He explained that IAB does not enforce the Patrol Guide to the same degree that an inspections unit does, and added that he is required to abide by the Patrol Guide.

He was not aware of the provision which prohibits threatening or making

promises to witnesses, and when asked about the propriety of doing so, said, "I never threatened a witness." As part of this investigation, he said he never saw any promises made to witnesses in an effort to obtain information. Confronted with the fact that he testified that Carione promised Shaffer help in exchange for information on the Respondent, he said, "...I heard him [Carione] make statements like that. I can't quote him directly. You would have to ask him." He did admit that he was present when Carione made that statement, but said that he was not present for any other similar statements to other witnesses.

Crespo was present at the Official Department Interview of Santangelo. He recalled the tape recorder being stopped during the interview, but did not recall Carione yelling at Santangelo "something to the effect of he better change his story or he is going to lose his job or get suspended." In his time with IAB, Crespo has participated in "several" Official Department Interviews. He said he has "almost rarely" seen the tape recorder stopped and a witness yelled at, but added that he witnessed Carione do this during the Santangelo interview. Crespo could not recall what Carione yelled at Santangelo or whether it was something of significance.

During the interview of [REDACTED] no threats or promises were made. However, he was told about the possibility of having his firearms removed. Crespo explained that "according to the [Department], and after conferring with License Division, you need good moral character to retain a gun permit. If it is determined that your character is in question or you might be involved or aware of any kind of criminal activity or corrupt practice, it (a pistol permit) may be repossessed by the Department." Crespo testified that he conferred with personnel from the License Division prior and subsequent to the [REDACTED]

interview. He also conferred with Carione, prior to the interview, who requested that [REDACTED] be advised of the possibility that his firearms permit could be "repossessed" if he was involved in illicit activities. Crespo said that [REDACTED] was given the warning "[i]n fairness to him." Confronted with the fact that he said he gave this admonition at the conclusion of the interview, Crespo claimed that it was still a fair warning because [REDACTED] was informed of the procedure. It was both Crespo's and his lieutenant's decision to inform [REDACTED] after the interview.

The investigation into [REDACTED], which commenced in August of 2007, was closed as of November 22, 2007. There was no paperwork or indications that the investigation had been closed. Crespo said that it was correct that there would be no restrictions on enforcement once the investigation was closed, but added that it was reopened on November 27, 2007. Crespo testified that according to his interviews of members of the Respondent's conditions team, the Respondent was aware that the case was reopened. He specifically said that according to Lieutenant Sheehan's interview, although he never stated it was reopened, the Respondent was aware of operations being conducted at [REDACTED] between September and December. Sheehan said he was sure of this. When shown a document representing Sheehan's interview for the purpose of refreshing his recollection, Crespo agreed that Sheehan claimed that he was not certain that he told the Respondent about the reopening. Further, Sheehan never directly said that he informed the Respondent about the Vice operation. Crespo acknowledged that worksheet did not reflect that he directly told the "subject officer" about the operation.

Crespo interviewed Raddicone three times. He also indicated that [REDACTED]'s interview was recorded. He also said that it was mandated that members of the service be

recorded during Official Department Interviews. Controlled telephone conversations with the Respondent were recorded, as were interviews with [REDACTED] and [REDACTED] Crespo agreed that recordings are made because it is a good investigative technique and allows for the preservation of a person's actual words.

The first [REDACTED] interview took place at an IAB office in Brooklyn. While the office was equipped with tape recorders, the interview was not recorded. Crespo could not recall whose decision it was to not record the interview. This interview comprised a debriefing as a result of an allegation that the Respondent informed [REDACTED] about the undercover operation in the bars. He could not recall if [REDACTED] claimed he received the phone number for Vice in 2007 from the Respondent. Crespo acknowledged that [REDACTED] made a number of statements during the interview, and he agreed that if a witness makes a statement which is later determined to be untrue, it could impact the witness' credibility.

During the first interview, Crespo agreed that [REDACTED] told him that he became acquainted with the Respondent in 2002, when he still owned the bar. The Respondent told him not to have "college parties" at the bar and identified himself as the precinct's conditions sergeant. [REDACTED] said he next encountered the Respondent via Shaffer, who said that he used him as an exterminator. Shaffer told [REDACTED] that he was giving the Respondent money, ostensibly for extermination services, but in actuality for protection. Crespo acknowledged that this was a serious allegation; however, on the third interview, [REDACTED] claimed that Shaffer never paid any protection money. When questioned about this inconsistency, Crespo said it affected his view of [REDACTED]'s credibility "a little bit." Asked whether he believed [REDACTED]'s first or third version, he

explained:

Based on the review of the LUDS and tolls and the review of the Vice case folder and my interview conducted with Vice Enforcement members stating his reliability, the conflict of [the Respondent's] relationship with Chris Shaffer and how I was able to determine there was still phone activity, I came to the determination that there was more information to show that he was reliable than there was unreliable.

He said that he did not know which version of [REDACTED] s account to him was true.

Crespo said the phone records would assist in determining whether or not the Respondent had phone contact with Shaffer. He was asked if his opinion would change if he determined that Shaffer and the Respondent had no phone contact and replied, "He did have phone contact." He testified that the charges against the Respondent were sustained because of the phone contact between the two. He said that he might reevaluate his position if he learned that Shaffer and the Respondent had no phone contact, and then admitted that he would not maintain his position if he learned there was "absolutely no phone contact..."

At [REDACTED] s first interview, Carione told him not to have any contact with the Respondent. This directive was given on two occasions and ignored each time.

[REDACTED] had conversations with the Respondent anyway, more than once. These conversations were not recorded, and Crespo indicated that he does not know what happened during them. When asked if [REDACTED] s non-compliance with Carione's requests impacted his credibility, Crespo said that it was possible but that [REDACTED] claimed that contact had to be maintained in order to avoid appearing suspicious.

Crespo testified that [REDACTED] claimed that the Respondent worked for Shaffer. He said during a later interview, [REDACTED] said he had no knowledge of Shaffer paying

the Respondent any money. He agreed that these two statements differed, and noted the inconsistencies in a report. [REDACTED] also provided different dates. Crespo said that this was not a concern of his. [REDACTED] also claimed that the Respondent had a “deal” with Shaffer, an agreement where SLAs would be issued to patrons of the bars but “never to the owner.” Crespo acknowledged that this allegation implies that the Respondent was protecting Shaffer and not doing his job as a conditions sergeant. This allegation was never investigated, and the SLAs were never examined.

Crespo could not recall anything significant about January 25, 2008. He agreed that there was a date where a wristwatch recording device was supposed to be fastened to [REDACTED] for a Staten Island court appearance regarding summonses issued to both [REDACTED] and Shaffer at the bars. Crespo said that the wristwatch recording device was part of an operation to accompany [REDACTED] to court to address the allegation that Shaffer would not receive summonses from the Respondent. He testified that the “operation fell through” and was unsuccessful. It was never determined who issued [REDACTED] and Shaffer the summonses that required their appearance in court. Crespo testified that the Respondent was in charge of the 120 Precinct’s conditions unit. He was unable to recall if the officers assigned to the Respondent’s unit performed SLA enforcement at locations without receiving directives from the Respondent.

Crespo conducted Official Department Interviews of officers Weinstein, Putney and Dadio, all of whom worked on the Respondent’s conditions team. All of them claimed that the Respondent tried to shut down the bars and that he never told them not to issue summonses. The officers also all said that they were never given instructions to issue summonses to bar owners over patrons. Crespo acknowledged being aware of an

investigation of Santangelo pertaining to falsifying records, saying that it was recently assigned to him and that he is involved in that investigation. When asked what the dates and time frame under investigation were, Crespo said it was still pending.

[REDACTED] told Crespo that the Respondent had "tipped off" Shaffer that there were undercovers in the bar. He did not recall if [REDACTED] later recanted this. He claimed that during the first interview, [REDACTED] "informed us that [the Respondent], had actually called him up and disclosed the information." Crespo then stated that he did not recall if [REDACTED] told him that the Respondent told Shaffer that there were undercovers in the bar. When shown a document to refresh his recollection, Crespo agreed that it was at the first [REDACTED] interview where he made the claim that the Respondent disclosed the information. After looking at a document again, he further agreed that on the third [REDACTED] interview, he claimed that the Respondent never tipped off Shaffer. He acknowledged that this was an inconsistency. Crespo also said that he learned, via Carione, that [REDACTED] told Shaffer of his status as a confidential informant.

Crespo was recalled on December 11, 2008<sup>3</sup> and his cross-examination continued. He recalled that he last gave testimony on November 14, 2008. Asked if he has done any work on the case since last testifying, he indicated yes, "to figure out with regard to the phone activity." He said that he discussed the case with Assistant Department Advocate O'Neal and Carione. He recalled the Court's directive on November 14 not to have contact with anyone regarding this case.

Regarding the receipt of telephone records for his investigation, Crespo said that

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<sup>3</sup> Crespo's testimony was interrupted due to a pre-scheduled vacation. On the day he resumed, the Department acknowledged the errors in the Penlink records and DX 3A, 4A, and 5A were received in evidence as corrected versions of DX 3, 4 and 5, respectively.

he received them in March of 2008. He reiterated that he had to rush to prepare his report on the records because he learned that the Respondent had filed for retirement. This was the reason that he was unable to contact Verizon to confirm if three-way calls, in fact, had taken place. Crespo agreed that the investigation of the Respondent continued into June of 2008, and agreed that he was never prohibited from calling Verizon in March, April, May or June to check on the accuracy of the phone records. He conceded that he "could have" made a phone call to Verizon during the pendency of his investigation, but he did not.

Crespo acknowledged receiving telephone records as early as January of 2008, which were inclusive of telephone calls made in December of 2007. He did not analyze the records at this point, indicating that they "remained in the case file while I was instructed to take other investigative steps as per Inspector Carione." He agreed that between January and March of 2008, he was in possession of telephone records and did nothing with them. Confronted with his prior testimony, on November 14, 2008, that he first received phone records in March of 2008, Crespo said that March was when they were analyzed.

On questioning regarding [REDACTED], Crespo acknowledged that he was told that Shaffer had complained to him about the possibility of an undercover in his bar asking lots of questions, making him suspicious that he was trying to set him up. Shaffer was also with his girlfriend when he relayed his concerns to [REDACTED]. Crespo recalled testifying on November 14, 2008, that [REDACTED] claimed that the undercover went to [REDACTED] on December 11, 2007 in order to pay Shaffer. He did not recall stating "numerous times" that [REDACTED] had specified December 11, 2007, but after reviewing a transcript of his

testimony, agreed that [REDACTED] repeatedly referred to December 11, 2007. In reviewing the worksheet that he generated for his interview with [REDACTED] Crespo agreed that [REDACTED] never specified December 11, 2007. Rather, he specified that it was "the following Tuesday," sometime in December of 2007 that Shaffer and his girlfriend came to speak with him. The December 11, 2007, date was a date assumed by Crespo, and it was never specified by [REDACTED]. Crespo explained that he arrived at December 11, 2007, because it was the Tuesday after December 8, 2007, the day that the bet had been placed. He agreed that he reconstructed the time of events, based upon [REDACTED]'s statement that Shaffer said that he entered into a bet with someone and subsequently met him the following Tuesday. [REDACTED] never specified the date that he met with Shaffer.

Crespo did not recall being asked on November 14, 2008 of [REDACTED]'s opinion of the Respondent. Nor could he recall if [REDACTED] did not speak favorably about the Respondent. After listening to a tape of the [REDACTED] interview he conducted, Crespo agreed that [REDACTED] referred to the Respondent as "a fucking bastard." He did not believe that [REDACTED] made these remarks fondly.

Crespo had reviewed the Respondent's Official Department Interviews before testifying. Crespo could not recall if any questions were asked of the Respondent concerning the allegations made by [REDACTED] and [REDACTED] during his interviews. He agreed that the investigation was initiated as a result of a complaint which was made by a person other than [REDACTED]. Crespo interviewed [REDACTED] and then [REDACTED] was interviewed in the presence of [REDACTED]. After viewing a transcript of his November 14, 2008, testimony to refresh his recollection, Crespo acknowledged that [REDACTED] and [REDACTED] were in each other's presence for their respective interviews. [REDACTED] was not present for the incident.

between the Respondent and [REDACTED] which resulted in the complaint against the Respondent. While Crespo was aware of the fact that [REDACTED] was not present, he still interviewed him in [REDACTED]'s presence and he indicated what he believed occurred. [REDACTED] was then interviewed. Crespo said that [REDACTED] never directly said that the Respondent threatened him, nor did he say that the Respondent made a threat. Rather, he claimed that the Respondent demanded to be paid. Crespo said that [REDACTED] was not threatened with any consequences, and the Respondent did not use his shield, a firearm, physical violence or break or throw anything inside of [REDACTED]'s store.

Crespo reiterated that [REDACTED] told him that he felt the Respondent's demeanor was such that he was "acting in a manner as if though this was a mafia." Crespo said that [REDACTED] did not attribute any specific statements to the Respondent which made him feel intimidated aside from referring to him as a "Paki" on a telephone call to [REDACTED]. [REDACTED] considered "Paki" to be a derogatory reference to Pakistani individuals, and Crespo was aware that [REDACTED] too, is of Pakistani descent. With respect to the phone call that [REDACTED] claimed that the Respondent had with [REDACTED] in which he was referred to as a "Paki," Crespo agreed that according to [REDACTED] and the investigation, this call never occurred. This was documented on a worksheet. Confronted with the fact during his interview, [REDACTED] claimed that the Respondent handed him a phone to speak to [REDACTED] and then later said that the call happened after the Respondent left the store Crespo attributed the discrepancy to [REDACTED]'s nervousness during the interview. Crespo denied being nervous himself during the interview, and said that his judgment was not impaired.

Crespo did not recall if [REDACTED] initiated any further calls to [REDACTED] after the Respondent left his store. He agreed that [REDACTED] claimed that the Respondent worked as an

exterminator for [REDACTED] s store, but that this was not an allegation investigated. Crespo said that it was not improper for the Respondent to be an exterminator and his services were subsequently not needed. Crespo did not recall his November 14, 2008, testimony that [REDACTED] did not want to use the Respondent's services anymore because "He basically said he didn't like his demeanor. He didn't like anything about him." He recalled [REDACTED] informing him at the commencement of his interview that he no longer wanted to use the Respondent because his "treatments" were not effective in eliminating vermin in his store. After reviewing the interview transcript, Crespo indicated that there were no statements that indicated that the extermination relationship was ended because of the Respondent's demeanor.

[REDACTED] was never interviewed by Crespo or any other investigator. No one inquired of [REDACTED] if the Respondent has ever attempted to intimidate his customers. Crespo acknowledged that he went to 15 different delicatessens to ask if they had contact with the Respondent. He agreed that all of them said that the Respondent never attempted to intimidate them. Crespo reiterated that [REDACTED] felt that the Respondent was acting as a spy for Richmond Wholesale. Specifically, that he was spying on the inventory of his store. Crespo agreed that the store was a public place and that one did not need to get permission to go inside. He could not recall if [REDACTED] ever alleged that the Respondent went behind the counter in the store. He further indicated, after reviewing the [REDACTED] interview transcript, that there were no allegations made about the Respondent checking inventory or spying on their store.

Crespo said that [REDACTED] and [REDACTED] were cooperative. Confronted with the fact that he authored "at least a dozen memos" reflecting unsuccessful attempts to contact

[REDACTED] Crespo said that [REDACTED] was "very busy." He agreed that he attempted to set up a controlled telephone call with [REDACTED] on "more than a dozen" dates, all of which resulted in [REDACTED] being either unavailable or unwilling to follow through. [REDACTED] was never asked to participate in a controlled phone call, and said that he preferred [REDACTED] be utilized for the call.

Regarding the 15 delicatessens in which the Respondent's photograph was shown, Crespo said that the "majority did not recognize him." They were all asked if the Respondent attempted to "shake them down...solicit business from them" and they all indicated that he did not.

Crespo did not recall if he checked to see if [REDACTED] s store was equipped with surveillance cameras. He agreed that he typically checks to see if an establishment is equipped with cameras and believed that he would have obtained the tape if the store had a camera. [REDACTED] claimed that he paid \$200 to \$300 to Richmond Wholesale during his interview, and then, in a later interview claimed to owe them over \$2,000. Crespo said that the \$200 to \$300 represented what [REDACTED] was able to pay, and that he "could never pay the whole amount" that he owed.

Crespo acknowledged preparing "many, many" worksheets about his investigation. The relationship between the Respondent and [REDACTED] was described in these worksheets, including the fact that they met in 2002 at a college party. After [REDACTED] sold his bar to Shaffer, Shaffer reintroduced [REDACTED] to the Respondent, indicating that he was an exterminator. [REDACTED] also claimed that Shaffer told him that the Respondent received protection money. During his investigation, Crespo reiterated that [REDACTED] and the Respondent had a personal relationship. With respect to the

bathroom incident that he previously testified to, Crespo said that the worksheets were never updated to reflect this.

On redirect examination, Crespo testified that [REDACTED] felt intimidated by the Respondent because of his “physical demeanor, the way he came in, the way he demanded the payment...[the Respondent]...still demanded, you know, a payment to be made...” He said that on June 20, 2007, [REDACTED] told him that he felt that the Respondent would come into the store to spy and look at merchandise. Specifically, [REDACTED] said that he felt that the Respondent would come into the store, under the guise of performing extermination, for the purpose of determining the store’s inventory levels.

Crespo testified that he is not obligated to inform retired members of the Department that their firearms could be removed by the License Division. Nor are retired members of the Department required or mandated to speak to IAB in connection with any investigation being conducted after they retire. Crespo said that when he informed [REDACTED] that there was a possibility his firearms would be removed based on the statements during his interview, [REDACTED] said that if he had known this prior to the interview, “I would have told you guys to go fuck yourselves.”

On re-cross examination, Crespo could not recall if he was laughing when [REDACTED] said “go fuck yourselves.” Regarding the June 20 interview of [REDACTED] and [REDACTED] Crespo acknowledged that he reviewed the transcript and testified that it does not make any reference to the Respondent spying on inventory in their store.

Crespo agreed that retired officers are not obligated to speak with him. When asked if a retired member’s guns could be seized for declining to speak with him, he said, “That depends.” He said that had [REDACTED] declined to speak with him, it would not have

been grounds to notify the License Division. [REDACTED] spoke to him voluntarily and said that he was responsible for Shaffer learning of the undercover Vice operation. He also advised Shaffer to cancel his bet. Crespo agreed that [REDACTED] admitted providing Shaffer with information and did not understand why the Respondent was being investigated.

After [REDACTED] voluntarily spoke with Crespo, his firearms were removed.

After listening to a tape of [REDACTED]'s interview, Crespo acknowledged that there was laughter after [REDACTED] made the "go fuck yourselves" remark. The interview continued after this remark. He also agreed that [REDACTED] referred to the Respondent as a bastard.

[REDACTED] never said that the Respondent was physically violent towards him. The Respondent never hurt him, nor did he break anything. He left the store after speaking to [REDACTED]

#### Summary of Interview of I [REDACTED]

[REDACTED] and [REDACTED] the complainants pertaining to Specification No. 6 of Case No. 83810/08 were interviewed by Crespo on June 20, 2007. A stipulation was reached between the Advocate and Respondent's counsel and as a result, the interview of [REDACTED] who was not a witness to the events in question, was redacted. Therefore, the interview of [REDACTED] is summarized here.

[REDACTED] said that he has known the Respondent as "Bill Lewis" because he had told him his name in the past when he had performed extermination services in his store. [REDACTED] said that he would pay the Respondent "\$20 or whatever he did for me" for the services but that he was not pleased with the Respondent's work. He said that he had to call "somebody else" for the extermination because "I want my store clean you know I don't I

don't need any, any mouse..." He told the Respondent he did not want to use his services anymore, and indicated that this was a separate issue from what he is complaining about.

[REDACTED] said, "[o]ne day I was working on the register and [the Respondent] and one other guy, a black guy, you know he walk in, he delivered the cigarette for Richmond Wholesale." He said that the Respondent did not typically make deliveries to the store on behalf of Richmond, and that when both men walked in, the Respondent said "I came to collect the money." When [REDACTED] asked what he was referring to, the Respondent said it was money that he owed to Richmond Wholesale. [REDACTED] told the Respondent that he deals with [REDACTED] from Richmond and the Respondent told him that he did not care and wanted the money. [REDACTED] said the Respondent was acting as if he was a bill collector from the mafia and remarked, "they came here they disrespect me so bad, you know here, you know thank God that because you know cause there was no people here, you don't like the way yelling and screaming." He added that the Respondent called him "the Paki."

After the Respondent called him "Paki," [REDACTED] said "excuse me" and got nervous because he did not want to have a fight in his store because it is his business place. He told the Respondent that he did not want any trouble and would "take care of whatever I owe." He said the Respondent then called [REDACTED] the owner of Richmond, and [REDACTED] asked to speak to him. The Respondent gave him the telephone and he asked [REDACTED] why he sent the Respondent and another man to his store. He told [REDACTED] that sending the Respondent to his store made it seem like he was dealing with the mafia. [REDACTED] told him that he did not send the Respondent, that "he don't send this guy" and indeed didn't send anybody. He reiterated that he deals with [REDACTED]. [REDACTED] also said that he was shaking.

After everything was done [REDACTED] called [REDACTED] and said, “[REDACTED], I asking you I don't want to deal with, with Bill Lewis, okay.” [REDACTED] noted his concern and told [REDACTED] that he appreciated his business. He questioned [REDACTED] as to why the Respondent came to his store and told him that “he disrespect me very bad in my store...he came in and he was like yelling at me the big tough man.” [REDACTED] said he did not know where the Respondent came from and that he would call him back. Then [REDACTED] received a call from [REDACTED], and [REDACTED] was also on the line. [REDACTED] expressed his disapproval of the Respondent coming to his store and again said he disrespected him. [REDACTED] apologized to [REDACTED] and [REDACTED] told him that there were other places that he could get cigarettes from. He again said he did not want a problem.

[REDACTED] then called [REDACTED] and told him, “[REDACTED] he disrespect me very bad...” and asked him to “please do whatever you can do.” [REDACTED] later found out the Respondent was a police officer, and said, “I hear that he was police from somewhere.” [REDACTED] said that he did not do anything wrong to merit the Respondent disrespecting him and that he was not a criminal. [REDACTED] said that the Respondent has not been back to his store since he spoke with [REDACTED] and [REDACTED] and that there have been no more issues with him. He indicated that the Respondent no longer performs exterminations in the store, and that the last time he was in the store was the day that the complaint was made on June 12, 2007.

[REDACTED] said that [REDACTED], the owner of Richmond, claimed not to have sent the Respondent to the store. [REDACTED] is a salesman who works for [REDACTED] whom [REDACTED] deals with; he works under [REDACTED]. [REDACTED] also said that the black male who accompanied the Respondent is a delivery man for [REDACTED]. He did not say anything during the incident in the store. The Respondent never made any statements that he was a police officer, nor

did he display a firearm or a shield.

█ then reiterated his distaste for the Respondent's actions towards him in particular calling him a "Paki."

Deputy Inspector Daniel Carione

Carione has been a member of the Department for 19-and-a-half years. He has worked in Internal Affairs since September of 2005. He is presently the Queens Borough Commander for IAB and has been so since August of 2008. Prior to being assigned as the Queens Borough Commander, he was the commanding officer of Group 33 of IAB. His primary responsibility in Group 33 was supervising cases assigned to the group.

In December of 2007, Carione said that he assisted in an investigation involving the Respondent where it was alleged that he leaked Department information. He supervised the overall investigation and Crespo worked as the lead investigator. During the investigation, Carione conducted and reviewed interviews and signed various reports and worksheets prepared by Crespo. He also set up meetings and issued directives as to what investigative steps needed to be taken. Carione said the investigation included members of the 120 Precinct as well as the Brooklyn South/Staten Island Vice unit. Supervisors were interviewed in order to gain background information, specifically then-Sergeant Charlson, Lieutenant Sanzone, and Captain Kearney, all of whom worked in Vice.

In gathering background information, Carione testified that he determined that the 120 Precinct Conditions Unit consisted of one sergeant, the Respondent, and six to eight police officers. Their duties comprised summons enforcement in bars, lounges,

disorderly premises and prostitution. Carione said that "the targeted areas were most commonly [REDACTED] and [REDACTED]" He determined that the issues that were being addressed by the Vice unit included "organized crime control or related sports betting in and about both [REDACTED] s and [REDACTED] Bar." Carione added that he was aware of the conditions himself in the 120 Precinct as there had been articles in local newspapers, such as the *Staten Island Advance*, about disorderly premises. He cited one example from the article about "two drunken youths who exited [REDACTED] and had sex on a lawn, a neighbor's lawn, in public view that was actually videotaped by the owner."

During the investigation Carione became familiar with a confidential informant, [REDACTED] Throughout the case, he had discussions with him on at least 20 to possibly 30 times via telephone and in person. He deemed the information provided by [REDACTED] to be reliable noting that [REDACTED] was interviewed three times, "in depth" and while there were "slight discrepancies" which he examined, the information was consistent. Regarding the slight discrepancies, Carione said that they were addressed and that he was satisfied with the explanations. He added that [REDACTED] was very cooperative and consistently available. He complied with requests including wearing wiring devices and also participated in controlled phone calls. [REDACTED] also met with Carione and his subordinates when requested, "was always available" and returned phone calls.

Carione also met and had a discussion with Shaffer. He said that he personally interviewed Shaffer after his arrest for gambling inside of [REDACTED] He questioned Shaffer regarding his relationship with the Respondent and learned that the two had a business relationship. Specifically, he found that Shaffer had used the Respondent's business, "Platinum Exterminating," in order to "[fog] a roach problem and such for both

bars, [REDACTED]s and [REDACTED].” Shaffer said that he paid the Respondent for the services and that was all he paid him for. Carione said that while speaking to Shaffer, he told him that any information or evidence that he could provide about “serious corruption and misconduct could be taken into consideration for his outstanding criminal charge for sports gambling.” In his career, Carione said he has done “hundreds” of debriefings similar to Shaffer’s and has used confidential informants dozens of times. When IAB began to use [REDACTED] as a confidential informant, he was already being used as an informant for Vice. Carione discussed [REDACTED] with the Vice supervisors and they were satisfied with the information that he provided and considered him to be reliable.

Members of the service who worked with or were familiar with the Respondent’s duties were also interviewed. An Official Department Interview of the Respondent was also conducted. The interview with the Respondent was to clarify information regarding his business, Platinum and to learn of his operating procedures. He also sought to determine his “role and responsibility” as a conditions sergeant and the types of conditions his unit addressed. Additionally, the interview addressed the Respondent’s relationship with Shaffer, [REDACTED]s and [REDACTED] and whether or not the Respondent was aware of the Vice operation at the bars. The interview was conducted in March of 2008.

During his interview, the Respondent claimed that he employed only one person, Ed Pepitone. The Respondent also indicated that his business had “a couple hundred accounts throughout Staten Island,” and that five or six of the accounts were for establishments within his precinct. He also claimed that while he did not service [REDACTED], [REDACTED], he serviced the apartment building that housed it. Carione said that [REDACTED]

owned that building. Carione did not recall all of the locations where the Respondent had accounts within the boundaries of his precinct, but said that he thought [REDACTED] was one. Carione said that the Respondent claimed that Pepitone, whom the Respondent referred to as "his best guy," freelanced at [REDACTED] and [REDACTED]'s. He found this statement significant because throughout the interview, the Respondent indicated that he employed Pepitone who serviced "hundreds of accounts" and then claimed that he became an independent contractor for the purpose of servicing [REDACTED] and [REDACTED]'s. Carione also testified that the Respondent "unequivocally denied any knowledge" of Vice operations in the bars, and similarly denied having divulged information about any operations. The Respondent was also questioned as to whether he had a relationship with the staff of [REDACTED] or [REDACTED]'s aside from [REDACTED] or Shaffer.

Carione said that the Respondent told him that he learned via [REDACTED] that Shaffer needed a bartender. The Respondent passed this information on to his sister, Dawn, via his parents. Carione later confirmed this, as Shaffer told him that Dawn worked for him as a bartender. Carione said that the Respondent never notified the Department of where his sister worked.

Carione testified that [REDACTED] is a retired member of the Department and was formerly assigned to the Respondent's conditions unit. He said that after retiring [REDACTED] went into business "with a disgraced former New York City police officer by the name of [REDACTED]." [REDACTED] and [REDACTED] worked in [REDACTED], [REDACTED] and [REDACTED]'s, which according to Carione were the three most problematic bars in the [REDACTED] area. Carione clarified that [REDACTED] was "terminated from the [Department] due to his role in

serious police misconduct." Crespo interviewed [REDACTED] in order to determine his "role," and if he witnessed or observed anything of significance. Carione was not present for the interview but he did review it. Prior to [REDACTED] being interviewed, Carione and Crespo had a discussion regarding the topics that needed to be addressed. Subsequent to the interview, [REDACTED] s firearms, his firearms permit and his retired identification card for this Department were "removed." Carione said that this was not done at his recommendation, but occurred as a result of a notification to the commanding officer of the License Division, Deputy Inspector Andrew Lunetta. Lunetta was notified because the investigation "indicated that there was organized crime related illegal sports betting taking place in [REDACTED] s and [REDACTED]" coupled with the fact that Shaffer employed [REDACTED] and [REDACTED] in the "actual locations where this illegal sports betting was taking place." Carione said that the notification was being made to the License Division notwithstanding [REDACTED] s interview, that is, the notification was made "regardless of what came out of that interview." Carione added that he did not have the authority to take [REDACTED] s guns.

Carione learned from the Respondent that [REDACTED] had notified the Respondent or Santangelo about Shaffer's arrest. Carione found this significant because the Respondent's unit closed down the bar that [REDACTED] and Shaffer earned a living from. He said this was peculiar in the sense that "[t]hey are making notifications to the law enforcement agency that there has been an arrest of the owner to the very law enforcement agency they know or should know would be closing them down. It made no sense." Carione reiterated that at the Respondent's March 10, 2008, interview, he maintained that he had no knowledge about any Vice operation; however, there was

evidence to the contrary.

Carione stated that he did not make any threats or promises to Santangelo during his Official Department Interview. He did admit to making an off the record statement. During the interview, Santangelo was represented by an attorney and a union delegate. Regarding the off the record statement, Carione explained:

As I quite often do, when information is being portrayed to me that indicates an individual is being less than truthful or is possibly impeding the investigation, I stop the tape, I instruct them of the provisions of 206-13, I instruct them as to the gravity of what their actions may involve, and I give them and afford them the opportunity to continue and set the record straight. It's something I do nearly all the times I perform a PG.

While he could not remember what exactly he told Santangelo, he said it was to the effect that he did not feel he was being honest and that he should reconsider what he was saying because it could be held against him. He also said that given what was being discussed, "I absolutely would have raised my voice."

On cross-examination, Carione testified that upon assignment to Group 33 in the fall of 2005, there was a pre-existing case involving the Respondent. He recalled his role in that case was "some administrative stuff." He did not recall contributing anything meaningful to that investigation. He said that in 2006, one or two other matters regarding the Respondent had been brought to the attention of his group. Regarding these cases, Carione said that aside from a commanding officer's review and a standard closing, he did not generate much documentation. He also testified that if he wants specific investigative steps taken, he will augment an investigator's worksheet via a commanding officer's review or commanding officer's investigative plan. He acknowledged that the majority of what he does is give directives to his subordinates. Carione could not recall if

he ever wrote an investigative fact memo aside from a commanding officer's review or investigative plan. He said that as a sergeant he wrote monthly activity reports, and as a lieutenant wrote recap reports, and agreed that in writing reports it is necessary to be as accurate as possible. He also stated that if he made a mistake, he would "absolutely attempt" to rectify it. Carione agreed that in gathering information, it is important to ensure that the information is reliable.

When asked if he recorded any factual data on a memo, Carione replied, "You keep using the word memo, but I don't write memos, nor do most police captains or police inspectors." Carione acknowledged being involved in an investigation of the Respondent in 2006 concerning his purchase of a 2006 BMW. When shown a document addressed to Deputy Inspector Vito Colamussi, he said that it was a "memo that was produced." He disputed that he authored the document, despite the fact that his name and signature appeared on it. Carione said the form is a "standardized form" prepared by the case investigator and is mandated in order to receive financial information. That his name and signature appeared on it, Carione said it is simply to justify why financial information was requested. The document was created under his command. When asked if the Respondent's vehicle was leased, Carione said the document did not refresh his recollection.

Carione said that he is familiar with the Patrol Guide and is required to be familiar with it. He said that it applies equally regardless of rank. He agreed that he enforces the penal law and is fairly familiar with it. He is aware of the penal law provision making it a felony to offer a false instrument for filing and knows it to be unlawful to issue false documents in an official capacity. On continued questioning regarding the Patrol Guide,

Carione said that he is familiar with the section concerning the interrogation of members of the service. He again acknowledged stopping the recording during the Official Department Interview of Santangelo but denied that it was an off the record discussion. He reiterated that it was correct that he wanted to re-inform Santangelo about the regulation pertaining to false statements. Carione denied yelling during the interview, saying, "I didn't yell at him, no...define yelling at him...I raised my voice." On questioning about what was said when the tape recorder was stopped, Carione replied, "That wasn't for my benefit, it was for his" and said that he reiterated the provisions of Patrol Guide §206-13 because he felt that Santangelo was being "less than truthful with his testimony." He characterized his act of shutting the tape recorder off as an "act of benevolence" which afforded Santangelo the opportunity to "recollect and get a clearer understanding of the truth." He did not recall shutting the tape off more than once.

Regarding Patrol Guide §206-13, Carione acknowledged that he was familiar with the mandate that the interview be recorded and of the prohibition of using off the record questions, promises, rewards, offensive language or threats, dismissal or other disciplinary action. Carione denied that this prohibition applied to him stopping the tape during the Santangelo interview, claiming that he "merely instructed him and gave him an opportunity to revisit certain areas. And I pressed him to the importance of being truthful. That is not threatening." In response to the Court, Carione indicated that a PBA attorney represented Santangelo at his Departmental interview. He reiterated again that he was simply informing Santangelo that his testimony "could be problematic down the line." He clarified that he believed Santangelo was providing incorrect information based on what the investigation had revealed. Carione denied that he always interviews people

for the purpose of ascertaining information. He said that on some occasions, he will conduct interviews where he has the information already. He informs the person that he is interviewing of the part of the investigation that concerns him. He also said that confronting a person who is being untruthful is effective.

Regarding the investigation that the Respondent "burned" an undercover operation, Carione acknowledged that he never personally observed anything indicating misconduct on the part of the Respondent. He acknowledged that the information that he had about that investigation came from what he was either told by other parties or through information that was gathered. Carione also testified that he believes it is appropriate to tell a witness during an interview that an answer they provide is not acceptable. With respect to the Santangelo interview, Carione said that the admonition that he gave was off the record because it did not pertain to what he wanted to record and that it was "a room full of people." However, he admitted that later in the interview, he gave the warnings on the record. Carione believed that Santangelo was the Respondent's regular driver. He recalled asking him if he knew of a relationship between the Respondent and Shaffer and Santangelo said it was a "strictly business" relationship. Carione did not recall if this business relationship pertained to exterminating services or to Shaffer properly running his bar; however, he believed that Santangelo made references to both exterminating and enforcement in the bar.

In reviewing a transcription of the Santangelo interview, Carione stated that it did not refresh his memory about what the Respondent and Shaffer discussed. He acknowledged telling Santangelo that he would not accept his answer that the Respondent and Shaffer discussed the bar and SLA enforcement, and that Santangelo later stated

otherwise "after I admonished him regarding the provisions of 206-13" at least twice.

On further questioning about the Santangelo interview, Carione could not recall saying "We know that [the Respondent] worked for Chris Shaffer," adding that at the time of the interview he suspected Shaffer and the Respondent were involved in a business arrangement. While he had knowledge of the fact that two undercover police officers had been killed in the vicinity of the bars in the past, he had no recollection of mentioning it to Santangelo.

Carione agreed that the Respondent found out about Shaffer's arrest for illegal gambling. Interviews were conducted to attempt to determine how the Respondent learned about the arrest. Carione stated that Shaffer did not call the Respondent to tell him and he was unsure of how [REDACTED] found out about it. He testified that [REDACTED] called Santangelo and told him to tell the Respondent about Shaffer's arrest. Carione confirmed that Shaffer's arrest was on March 6, 2008, but denied taking him somewhere and telling him that he would receive leniency to "get" the Respondent. He confirmed that Shaffer was offered help with his criminal matter in exchange for assisting in the IAB investigation of the Respondent. Carione again noted that [REDACTED] did not learn of Shaffer's arrest via the Respondent. He also stated that [REDACTED] called the Respondent the night of Shaffer's arrest to tell him that IAB had arrested Shaffer inside of [REDACTED] and "was attempting to flip him on [the Respondent]." Carione did not know if the Respondent attempted to get Shaffer out of jail.

Carione acknowledged that "the premise" of the investigation was that the Respondent had an improper relationship with Shaffer and that he was "very curious" when the Respondent was contacted because of Shaffer's arrest. He disagreed that the

Respondent was notified because it was well known that Shaffer had been interviewed about him. He claimed that [REDACTED] called Santangelo and then the Respondent called [REDACTED] who later went to the 120 Precinct to determine where Shaffer was. When asked if the Respondent's conversation with [REDACTED] caused him to learn of Shaffer's arrest, Carione said he did not know what their conversation was about. In response to the Court, Carione testified that there was phone contact between the Respondent and [REDACTED] and that they both admitted to speaking the night of Shaffer's arrest and that he learned that [REDACTED] "show[ed] up at the 120 Precinct." He admitted that he did not know if [REDACTED] appeared at the precinct before or after speaking to the Respondent. In response to the Court, Carione acknowledged that he did not know if the Respondent and [REDACTED]'s conversation led to [REDACTED] going to the precinct.

Carione acknowledged mentioning organized crime in his prior testimony. In response to a query asking about a "big problem with gambling" in the bars, he replied, "I don't work for Vice sir. I don't know." He again stated that [REDACTED]'s firearms were removed because of his involvement with [REDACTED] and [REDACTED]'s and their connection to organized crime. Carione acknowledged that, to his knowledge, Shaffer was not a "main member" of an organized crime family. The only person arrested on March 6, 2008, was Shaffer, for placing a \$200 wager on a sports game with an undercover in addition to participation in a "high stakes poker game." Carione confirmed that the bet occurred in December of 2007, and the arrest took place four months later in March of 2008. The "high stakes poker game" was not completed due to the "compromise of the undercover." He did not know how many conversations there were about the poker game or when they occurred, indicating that the information came from

the Vice worksheets. Confronted with the fact that the undercover placed bets with Shaffer after he already knew him to be an undercover, Carione explained that he found it significant and made a decision to cease using the undercover officer for his own safety.

In response to the Court, Carione believed the information leak about the undercover occurred on December 12, 2007. When asked if any conversation occurred about gambling after this date, Carione testified that Shaffer subsequently told the undercover officer that he was "not in the business, I am not doing it. Go away." He elaborated, explaining that after the initial bet, the disclosure, [REDACTED] informed Vice that the "undercover could have been blown." The undercover was put "back in" to make another bet with Shaffer who refused to do so. Regarding the conversation with [REDACTED] and Shaffer, Carione testified:

As I understood it, Shaffer's conversation with him was precipitated by a suspicion that Pete was, in fact, an undercover, and he merely confirmed that with [REDACTED]. So I was under the impression in other words that [Shaffer] actually seeks out [REDACTED] because now he is getting information that Pete who was introduced through [REDACTED] may be an undercover and he wasn't quite convinced.

Questioned further regarding this statement, Carione claimed that he was paraphrasing and that it was based on "information I got...from the timelines built from both instances." He indicated that he did not personally interview [REDACTED] or review the tape of it but that he did review the related worksheet. He added that [REDACTED] and the Respondent did not get along, saying that the Respondent made this claim during his Official Department Interview.

Carione was shown the worksheet of [REDACTED]'s interview to refresh his recollection. While he said that the first paragraph of the document indicated that [REDACTED] had an argument with a lieutenant and "[the Respondent] did not back him up regarding the

altercation..." it was not adequate to refresh his memory about whether [REDACTED] did not like the Respondent. He had no recollection of [REDACTED] referring to the Respondent as a "bastard," and agreed that [REDACTED] told Shaffer to cancel his bet with the undercover officer. He was unsure of when that occurred. Carione did not know if that bet was subsequently cancelled, adding that the first bet was conducted over the phone and paid. He acknowledged, after reviewing the worksheet, that [REDACTED] claimed that he gave Shaffer the information about the undercover. [REDACTED] did not know why the Respondent was being investigated for it.

Carione acknowledged reading news articles about [REDACTED] and [REDACTED] s. He could not recall if he used "Google" to find the articles but said that he conducts searches to find them. Background checks on persons of interest were conducted, including those which encompassed public records and different computer queries. He admitted to performing checks on [REDACTED] and was asked if he found a news article relative to an F.B.I. investigation into the Decavalcante crime family and [REDACTED]. Carione indicated that this was disclosed by [REDACTED] to IAB early in the interview process. He was unsure if Crespo knew about it as he was not present for all of [REDACTED] s interviews. [REDACTED] s involvement with the F.B.I. and an organized crime family had already been documented by Vice. Further, Vice had contacted [REDACTED] s handler at the F.B.I. who attested to his reliability and responsibility as well as that "he had done a good job." Carione could not recall when [REDACTED] disclosed his involvement with the F.B.I., saying that he had spoken to him 20 to 30 times. [REDACTED] handling agent never informed the Department of the charges in [REDACTED] case or if he had done anything unlawful.

In the past, Carione said that he has been lied to by confidential informants. He said that the circumstances and inconsistencies presented by the informant would dictate the steps that he would take to gauge credibility. He agreed that at the first interview with [REDACTED] he claimed that Shaffer was paying the Respondent protection money. At the third interview, he redacted the claim, saying that Shaffer never paid any such money. Carione agreed that these two statements are inconsistencies and said that he looked into this in determining [REDACTED]'s reliability. He admitted that there were other inconsistencies in [REDACTED]'s information but nothing that he would "classify...as serious." When probed about why he did not consider the inconsistencies serious, Carione testified that [REDACTED] had made "other statements that equivocated, to some degree, some of what he said on day one." On further questioning about [REDACTED]'s interviews, Carione acknowledged that at the first interview, [REDACTED] made several allegations against the Respondent. These allegations were documented, and included the following: that Shaffer paid the Respondent protection money and that Shaffer employed the Respondent. Later, [REDACTED] claimed that the Respondent never received protection money.

After meeting [REDACTED] on December 14, 2007, Carione told him not to have any further communication with the Respondent. When questioned if he "asked him or...instructed him," he said, "He doesn't work for me. I told him to refrain from it if possible." [REDACTED] had contact with the Respondent anyway and Carione recalled reprimanding him for it.

The Respondent and [REDACTED] had a prior relationship. Carione was aware of the fact that [REDACTED] performed some contracting work in the Respondent's bathroom.

He learned that the Respondent was not satisfied with [REDACTED] s work, that the Respondent referred to him as a thief, and that a substantial amount of money had to be refunded by [REDACTED]. This relationship and the financial dispute was documented in a worksheet relating to the Respondent's interview, when the Respondent made mention of it. He noted that [REDACTED] also mentioned the incident about four months prior.

[REDACTED] also said that he and the Respondent vacationed in Point Pleasant. Carione could not recall if a worksheet was generated reflecting this, but did acknowledge that a worksheet was completed for the bathroom dispute. He could not recall if a dollar amount was ever provided for the amount that [REDACTED] had to refund the Respondent for the bathroom work.

On examination by the Court, Carione acknowledged that [REDACTED] informed him about the bathroom job, the dispute arising out of it, and the subsequent refund that he had to provide to the Respondent. He could not recall [REDACTED] mentioning vacationing in Point Pleasant. [REDACTED] was aware that the Respondent was a sergeant and reported that the two had an association. The two spoke on the phone, and Carione added that [REDACTED] said that he used the Respondent for extermination services for the building housing [REDACTED], a building that he owns. He never claimed to employ the Respondent for exterminating the actual bar.

On continued cross-examination, Carione acknowledged that he has been to [REDACTED], although he has only been present in the bar and not the apartment buildings above it. He clarified that the bar occupies "the first floor and sort of the corner area" of the structure. The apartment building was not part of the investigation. Carione could

not recall that the Respondent put [REDACTED] in touch with Vice personnel in order to address problems at [REDACTED]

Carione acknowledged that during the investigation, it was alleged that the Respondent's sister, Dawn, worked in a bar within his command. More specific to the investigation was whether the Respondent coerced Shaffer to give his sister a job. Dawn Lewis was never interviewed, and no attempts were made to contact her. Carione testified that the Department became aware of the allegation via [REDACTED] who claimed that Dawn was working at [REDACTED]'s. Shaffer confirmed this. In reviewing the worksheets pertaining to the two interviews of Shaffer, both documents were absent of any mention that Dawn worked at [REDACTED] s.

Carione recalled his earlier testimony that the Respondent and Shaffer had a business relationship regarding extermination services. He could not recall Shaffer denying, during an interview, that he had contact with the Respondent. He reiterated that it was his recollection that Shaffer claimed to contract with and spoke to the Respondent regarding extermination services. After reviewing worksheet 62, he conceded that Shaffer initially denied having contact with the Respondent but after being confronted with phone records indicating the contrary "went into the whole relationship."

Carione indicated that he had Shaffer's phone records checked and received the requested data in the form of a Penlink analysis from Group 7 of IAB. There was also an associated worksheet from Crespo, which he reviewed and signed off on. He recalled a March 7, 2008 controlled telephone call between [REDACTED] and the Respondent. In reviewing worksheet 73, it indicated the call took place in the early evening at around 7:48 pm. It was also documented that on that date at that time, Shaffer and the

Respondent spoke for four minutes. He agreed that one of these calls was the controlled telephone call which was reviewed by him as it was tape recorded. Asked if he took note of the inconsistency of a controlled phone call being conducted at the same time that the Penlink records showed the Respondent to be on the phone with Shaffer, Carione said "no." He admitted that he did not check the accuracy of the worksheet. He said that the worksheet memo was never compared with the Penlink records. He stated that he assumed that the worksheet was generated from information in the Penlink analysis.

Carione was further asked:

Q: Well, is it fair to say that you didn't notice that there are multiple times that according to your worksheet here that Bill Lewis is receiving phone calls at the exact same time from your target and your informant?

A: That was explained or alluded to in the worksheet and satisfied me.

He explained that the discrepancies were clarified to his satisfaction because Crespo opined that they were possible three-way calls. He assumed that was accurate, but then testified that he lacked the technical knowledge to determine if the calls were, in fact, three-way calls. Carione said that he did not need to call the phone company to confirm if a three-way call took place, because he knew that [REDACTED] and the Respondent spoke during the controlled phone call. He did admit, however, that he did not know if the Respondent and Shaffer spoke at that same exact time. The target for the controlled phone call was the Respondent, not Shaffer. Carione said that he did not find it significant that the phone data showed the Respondent and Shaffer to have had phone contact, and added that he "[had] no reason to believe now or at any time...that the information that I had was not accurate." He made no efforts to check the accuracy or confirm the phone data.

One of the allegations advanced by [REDACTED] against the Respondent concerned

the selective enforcement of SLA regulations. Specifically, he alleged that the Respondent would not issue violations to the bar owners but, rather, only to patrons. In reviewing a transcript of [REDACTED]'s interview, Carione confirmed that this allegation was made.

Asked whether he confirmed this, Carione indicated that he reviewed some of the SLA enforcement activity and learned that Shaffer and [REDACTED] received summonses in the past.

He said that [REDACTED]'s information was inaccurate, but denied the allegation was disproved via further investigation. He testified:

The facts revealed that a large percentage of the summonses were, in fact, issued to patrons. The majority were issued to patrons and not to the bar owner. And furthermore, a huge percentage, far, far outside the norm of the summonses issued were dismissed.

Carione agreed that it is a Court's decision to dismiss a summons and indicated that court is held during business hours. He said that the Respondent worked a "midnight tour." He disagreed that the Respondent would have to have requested overtime to go to court to check why summonses were being dismissed, indicating that he could have changed his tour. He was unsure if the Respondent had been requested to go to court to ascertain why summonses were being dismissed.

Carione said that he familiarized himself with the Respondent's duties as a conditions sergeant. He gathered that a directive had been given to stay away from the bars due to the Vice investigation. During the Official Department Interviews of members of the Respondent's team including Santangelo, Putney, Weinstein and Daddio, they were asked if they had been instructed to stay away from the bars due to the Vice operation. Carione said that he would be able to examine summons activity to determine if Santangelo issued SLAs to the bars at a particular time. He disputed that the issuance

of summonses during certain times would indicate disobeying an order to stay away from the bars, explaining that there was a separate investigation into the propriety of the summonses issued by the Respondent's team. He elaborated that the Respondent's entire team had been disbanded due to the "fact that the team was writing summonses that were untruthful." Carione said that he was not directly involved in this investigation and could not attest to it, and added that none of the subjects have received charges. The Respondent was not questioned about summons activity at his March 2008 Official Department Interview and Carione was not aware of him writing any summonses personally. While Carione claimed that fraudulent summonses were issued from October to December of 2007, he was unable to identify a single fraudulent summons issued to the bars, indicating that he is not involved in that investigation.

Carione was aware that [REDACTED] had been closed at some point in January of 2008. He disputed that the bar was closed as a result of an incident which occurred when the Respondent was present conducting enforcement and a fight occurred between members of the service and off-duty firefighters. He claimed the Respondent had no role in the January 2008 shut down of the bar, but stated that while issuing summonses to patrons, they were assaulted. He believed that the assault precipitated the involvement of the Civil Enforcement Unit of the Legal Bureau closing the bar and not the Respondent or his conditions team.

During the Respondent's Official Department Interview, he stated that Pepitone worked for him, and also freelanced as an exterminator. Carione testified that Pepitone was never interviewed. During Daddio's interview, he revealed that he had a falling out with the Respondent and left his unit to work in another command. He also claimed that

the Respondent had no relationship with any bar owners and that the only time he saw him speak to Shaffer was for police-related business. Daddio claimed that he was never told to do or not to do anything regarding bar enforcement. Carione agreed that in interviews of Weinstein and Putney, neither officer offered any information that could confirm the Respondent engaging in improprieties.

Carione denied intimidating [REDACTED] into cooperating with the investigation of the Respondent. He did admit that he offered to have transportation arranged for him so that he would not have to use his own car.

On redirect examination, Carione recalled being questioned regarding [REDACTED]'s initial claim that the Respondent was paid protection money and his deviation from that claim at a later interview. He reiterated that he confronted [REDACTED] about the discrepancy, but added that at the first interview [REDACTED] "use[d] equivocation" in his claim saying he had never personally witnessed the payoff or the business relationship about the exterminating. Carione also recalled testifying that he told [REDACTED] not to contact the Respondent. He explained that [REDACTED] continued to have contact anyway, claiming that if he ceased communication, the Respondent would become suspicious.

Carione said that the Respondent was not questioned at his Official Department Interview about summons activity because that matter was part of a separate investigation.

Pepitone, he said, was not interviewed because the Respondent had explained the relationship and how Platinum operated, that is, the Respondent was the sole proprietor of the business and that he had one employee, Pepitone. The Respondent also said that

he performed extermination in the building that housed [REDACTED] but would not exterminate the bar. He claimed that Pepitone would act in a freelance capacity and exterminate both [REDACTED]'s and [REDACTED]. Carione said that Shaffer confirmed that he spoke to the Respondent about having "one of [the Respondent's] guys" perform the exterminating. Santangelo also confirmed this when he claimed in his interview that he witnessed conversations between the Respondent and Shaffer regarding extermination services. Carione concluded that an interview of Pepitone was not necessary.

Carione was asked to describe his relationship with [REDACTED]. He testified that he was congenial and cooperative, characterizing his attitude as "very, very chipper." It was only recently that [REDACTED] expressed discontent and concern about testifying against the Respondent. He was unsure what made him anxious and scared to testify.

Regarding the interviews of officers other than Santangelo, Carione testified that they had no knowledge about the Respondent's contracts in [REDACTED] and [REDACTED]'s. This was so because Santangelo was the Respondent's driver, and therefore, was privy to certain types of information that other members of the conditions team would not have known. Santangelo had more contact with the Respondent than did the other officers.

On re-cross examination, Carione admitted that he did not document the fact that Santangelo and the Respondent had a unique relationship.

Regarding Pepitone and extermination services, Carione agreed that the Respondent claimed that he performed freelance work and never claimed that his freelance work only included the bars. The Respondent also spoke positively of Pepitone's work, claiming he was "the best guy he used and was his only employee."

Carione agreed that the Respondent informed him that he had let another employee go. He further agreed that Santangelo said that he was present on occasion when the Respondent received phone calls, while on-duty, from people saying they had cockroach or rodent problems. Carione said he had "no idea" what took place during those conversations. When asked if Shaffer called the Respondent for help with a rodent problem, and the Respondent told him that he could not do it but offered to refer someone, Carione said that did not resemble what Shaffer told him.

Carione reiterated that he saw no need to interview Pepitone. He did not find it important to determine if Pepitone was paid for services and retained all of the money for himself. Upon being asked if he had any information that Pepitone gave money to the Respondent, Carione said, "[the Respondent] referred to him as his guy several times taking ownership of him." Carione was asked, again, if Pepitone performed extermination work, got paid by Shaffer, and gave money to the Respondent. He replied that he did not know.

Carione said that he never conducted an audit of the Respondent's company because it was a cash business and he did not see the need. On inquiry from the Court, he indicated that he did not request any books or records.

With respect to [REDACTED] Carione acknowledged that he told him to stop having contact with certain people. He did not comply with this request. Referring to worksheet 102, Carione acknowledged that [REDACTED] and Shaffer had a confrontation, during which [REDACTED] told him that he worked as a confidential informant for the Department.

Carione acknowledged that he prepared notes, or a recap of all of [REDACTED]'s interviews. He admitted writing, "Chris told the CI that subject officer gets paid for

protection, not just extermination." When asked to review the worksheet pertaining to the first interview where [REDACTED] made this allegation, worksheet 7, Carione noted that it reflected that [REDACTED] did not witness or observe what Shaffer had told him. When asked if he pointed out that the claim was made under "equivocation," Carione claimed that he was trained to note equivocation and addressed the issue thoroughly.

Upon inquiry from the Court, Carione said that the paragraph in the worksheet addressed the issue of Dawn Lewis working at [REDACTED]'s.

Lieutenant Peter Sheehan

Sheehan has been a member of the Department for 15 years. He is presently assigned to the 120 Precinct where he is the special operations lieutenant. In that capacity, he oversees various units including anti-crime, SNEU<sup>4</sup>, conditions and domestic violence. He indicated that he has been assigned as the precinct's special operations lieutenant for approximately four years. He receives his direction from the precinct's commanding officer.

Sheehan explained that the conditions team at his precinct goes after quality of life enforcement, such as drinking alcohol in public, vagrants, prostitution, noise and "bar establishment stuff." He said that in December 2007, the precinct's commanding officer was Inspector Bruno, and the midnight conditions unit was supervised by the Respondent. Sheehan detailed how the conditions unit would receive their assignments. He said that he and the commanding officer would discuss current conditions in the precinct, crime trends and community complaints. The commanding officer would inform Sheehan what areas he wanted work performed in, and in turn, Sheehan would

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<sup>4</sup> Street Narcotics Enforcement Unit

inform the Respondent.

Sheehan indicated that there were "quite a few bars in the Port Richmond area" that were problematic and identified [REDACTED] and [REDACTED] on [REDACTED] Street.

He testified that problematic locations can be closed via the nuisance abatement procedure and explained that this can be triggered after three separate incidents of: sale of alcohol to a minor, sale of alcohol to an intoxicated person, or sale of alcohol after hours.

The Civil Enforcement Bureau of the Legal Bureau would submit the instances of the violations to a judge for a nuisance abatement closure. Both [REDACTED]s and [REDACTED]

[REDACTED] have been closed via the nuisance abatement procedure. Sheehan said that the nuisance abatement closures are temporary in nature, and that closed premises would remain closed "for a week, maybe two weeks at the most." A representative from the closed premise would appear before a judge, along with an attorney from the Department and a disposition would be reached regarding the closure.

Sheehan said that none of his units work in tandem with undercover units such as Vice or Narcotics. He testified that they share information with Vice and Narcotics, and explained that a narcotics or prostitution offense occurring on the outside of a premise would be referred to him while something occurring on the inside would be handled by Narcotics or Vice.

With respect to the Brooklyn/Staten Island Vice unit, Sheehan was aware that they were conducting an operation inside [REDACTED]s and [REDACTED]. He said that he was aware of the operation prior to December 11, 2007, as his commanding officer, Bruno told him about it sometime between October and December. Bruno also told him to tell the Respondent about the operation and cease enforcement in the bars. Sheehan

could not recall when he passed this information on to the Respondent, but did say that he told him "the next time I saw him." He added that this was the only instance where he has ever been told by his commanding officer to provide the Respondent with this kind of information in the three years that he had supervised him.

Sheehan said that the Respondent never had a problem understanding or complying with directions. When asked to describe his overall performance as a supervisor, Sheehan said, "Excellent." He and the Respondent did not work the same tour, as Sheehan generally worked evening shifts and the Respondent a midnight shift.

Sheehan knew that Shaffer was the owner of [REDACTED]s and [REDACTED] He had become familiar with Shaffer through attending community council meetings, functions which were regularly attended by Shaffer due to prolific complaints from the community about his bars. He found out that Shaffer had been arrested in March of 2008 for illegal gambling. Sheehan said that he learned of this arrest as it was his custom to review the arrests that were made each day.

On cross-examination, Sheehan agreed that an Official Department Interview was conducted of him on March 14, 2008 regarding the Respondent. He agreed that this date was closer to the fall of 2007 than November 17, 2008, the day he testified in this proceeding. He acknowledged that during his interview, he was required to be truthful and answer questions to the best of his knowledge. He also indicated that he was obligated to say if he knew something, or conversely, if he did not know something.

Sheehan recalled testifying that he informed the Respondent of Bruno's directive to cease enforcement at the bars. He claimed to have reviewed his Official Department Interview transcript prior to testifying and acknowledged there were references to, "I

believe so but I am not a hundred percent sure..." regarding having informed the Respondent about the undercover operation. Sheehan claimed that he did not have a lot of time to think during the interview and was unsure if he or Bruno communicated the information. He reiterated that he told the Respondent about the operation, and to stay away from the bar. He did not know who the target of Vice's operation was, and acknowledged that is not something which would have been revealed.

In the past, Sheehan agreed that there have been occasions where he has been apprised of undercover operations, and passed the information on to supervisors such as the Respondent. He said that he only had a recollection of informing him this one time of a Vice operation and was unable to recall if he ever informed him of other undercover operations. He reiterated that he believed he told the Respondent of the operation sometime between October and December.

Sheehan said that some time after telling the Respondent of the Vice operation, he learned that the operation had concluded. Specifically, he called Vice "sometime in December." He indicated that he is aware of some of the allegations faced by the Respondent, and was unaware if the alleged information disclosure happened before or after the Vice operation. After reviewing the transcript of his Official Department Interview, he said that he gave a hypothetical and generalized answer with regard to informing the Respondent about a Vice operation. Specifically, that if the commanding officer said to avoid a bar or hit a bar, he would have passed the information along to the Respondent the next time he saw him.

After determining that the Vice operation had concluded, Sheehan sent the Respondent back to the bar for the "second or third" violation in an effort to have it

closed down via nuisance abatement. He testified, "I definitely told him after I spoke to the detective to start going into the bar again." No one had notified Sheehan that IAB was involved or to stay away from the bars at this point. Further, Sheehan claimed that he never knew about the undercover officer's identity being compromised. No notifications were made for the purpose of keeping the Respondent away from the bars. Sheehan reiterated that once he determined from Vice that their investigation had concluded, he told the Respondent that he could return to the bars for enforcement purposes. He did not remember the timeline of when he told the Respondent then, but said that he would have told him "immediately" after he learned of it.

Sheehan did not have a specific recollection about the SLAs that were issued by the Respondent's team during December of 2007. A document was unable to refresh his recollection. He said that the third "hit" (or instance of a violation) was achieved and the bar closed in January or February of 2008, shortly after a fight occurred in the bar where members of the service were injured. Sheehan reiterated that he still had no personal recollection of SLA summonses being issued to the bars in December of 2007.

Sheehan has never witnessed the Respondent sharing confidential information with anyone, nor did he observe him have an inappropriate relationship with Shaffer. He did not know who [REDACTED] was. He confirmed that the Respondent had a very active conditions team and claimed that they were "very productive" in their enforcement efforts. The Respondent and his team were successful in closing down approximately 15 bars. Sheehan agreed that because of the enforcement nature of the Respondent's duties and his aggressive approach to them, there were people in the command who did not like him.

The Respondent was under Sheehan's supervision for three years, and he reaffirmed his characterization of him as excellent.

On redirect examination, Sheehan recalled that at his Department interview, he said that he told the Respondent of an active Vice operation.

On re-cross examination, Sheehan said that he was unaware that the Respondent was the target of an investigation.

Upon examination by the Court, Sheehan testified that when he told the Respondent to stay away from the bars, he was specific as to [REDACTED] and [REDACTED] s. He was also aware that the subject of the investigation concerned illegal gambling.

Lieutenant Shawn Charlson

Charlson has been a member of the Department for nine years. He is presently assigned to the 81 Precinct where he is the Special Operations Lieutenant. In this capacity, he oversees anti-crime units, SNEU and conditions teams. Prior to his assignment at the 81 Precinct, he was a field team supervisor at the Brooklyn South/Staten Island Vice Squad. In that capacity, Charlson supervised detectives and oversaw undercover operations. He supervised between 200 and 250 operations while at his former assignment. He also worked as an undercover in 2003 and 2004 in Queens Narcotics.

Charlson detailed the manner in which cases can be commenced in Vice. He testified that complaints telephoned to 911 are routed to the OCCB<sup>5</sup> Field Operations Desk and then assigned to the respective Vice or Narcotics unit. Precincts also call Vice

<sup>5</sup> Organized Crime Control Bureau

for assistance with problematic, vice-related concerns. Charlson testified that it was not routine procedure to notify individual precincts when operations were being conducted within a particular precinct “[f]or the safety of undercovers.”

He said that upon receiving a complaint, computer checks are conducted on the premise in addition to surveillance and observations. Charlson testified that the equipment typically used during the investigations includes “non-descript vehicles, undercover observations, kels, photos, surveillance, video surveillance.” With respect to an undercover officer carrying a firearm into a location, he said the decision rests with the undercover officer. For illegal gambling investigations, Charlson said that one “buy” by an undercover can yield an arrest; two “buys” can yield a search warrant.

Charlson acknowledged that he was working on December 8, 2007, and performing a 1:00 pm to 9:00 pm tour of duty. On that day, he had a tactical meeting regarding two operations that his unit was conducting in Staten Island. The operations involved [REDACTED] and [REDACTED]’s bars. Charlson and the field team assigned to him for the day were present at the meeting. He testified that he was familiar with the two premises as undercover operations had been conducted and arrests made at [REDACTED] [REDACTED] for illegal gambling previously. Computer checks, surveillance and information from confidential informants had been used to familiarize Vice with [REDACTED] s. He specified that the arrests were made at [REDACTED] approximately one-and-a-half to two months prior to the December 8, 2007 meeting.

Despite the fact that he said that patrol precincts were not typically made aware of Vice investigations, Charlson said that the instance here was an exception. Detective Kalloff of Charlson’s unit notified the 120 Precinct of the investigation into the bars and

he was assigned as the case officer for the two locations. Kalloff told personnel at the 120 Precinct of the operation so that they could cease their enforcement at the bars so as to allow the Vice operation to proceed. Charlson testified that Kalloff's notification was prior to December 8, 2007.

Charlson testified that he is familiar with [REDACTED] who was an informant for Vice, and was signed up into the confidential informant program via Kalloff who functioned as his handler. He explained that his unit became acquainted with [REDACTED] when he telephoned the Vice office with information about different locations in Staten Island where he claimed illegal gambling was taking place. He had between 10 and 15 conversations with [REDACTED], during which he furnished the Vice unit with information about unlawful activities at [REDACTED] and [REDACTED]. These conversations occurred "about 20 days prior to December 8." Charlson indicated that [REDACTED] was cooperative.

During the investigation, Charlson made a notification to IAB. This notification was made because [REDACTED] told him that "one of the subjects who we were dealing with, his name is Chris Shaffer, had knowledge of my undercover being a detective." He said that he made his notification on Wednesday, December 12, 2007, and explained that he told IAB:

The information I related to IAB was the information I received from [REDACTED] in which he stated to me that Chris Shaffer knows that the undercover is a detective. And I asked [REDACTED] well, how do you know this? He informed me that a sergeant from the 120 Precinct stated—his name was Bill Lewis—informed Chris Shaffer that there's undercovers performing operations in the locations that we were conducting our operations. And protecting my undercover, I had to make that notification because I didn't know where he got the information from.

Charlson said that the undercover officer and Shaffer had been in communication with each other prior to the IAB notification and that communication had ceased.

Specifically, Charlson said the undercover received a phone call “from our subject at the time, which was Chris Shaffer, saying that he didn’t want to deal with [him] anymore.”

Charlson testified that after his December 12, 2007, notification to IAB, they requested that he meet with them on December 14, 2007. While at the meeting, Charlson received a telephone call from ██████████ who informed him that Shaffer wanted to meet with him “in regards to him introducing an undercover detective to his illegal gambling operation.” IAB told Charlson to ensure ██████████’s safety during the meeting. He said that he and another detective went to ██████████’s, and observed ██████████ having a conversation with Shaffer for about ten minutes. Charlson said “[a]nd that was pretty much the last dealings I had with ██████████.” Based upon Shaffer expressing a disinterest in dealing with the undercover, the operation was cancelled.

Ultimately, Charlson said, the assignment of the undercover detective had to be changed. He explained that it was for his safety as his identity was compromised and he could no longer perform in an undercover capacity in Staten Island.

On cross-examination, Charlson agreed that the compromising of an undercover officer’s identity is a “big deal.” He agreed that he learned about the identity compromise in December of 2007 and was in contact with IAB from that point forward. Charlson acknowledged that if Vice were to have received a call from the 120 Precinct during the December 2007 time frame asking about the Vice operation, it would have been documented and the caller’s interest investigated.

On questioning about the notification made to the 120 Precinct to stop enforcement at the bars, Charlson did not recall when that notification was made. Examining a document did not refresh his recollection and he said that he has never seen that document before. He did not know if the notification was made in August of 2007. When asked if he was aware that an operation commenced in [REDACTED] in August of 2007, Charlson said, "...We made arrests there prior. I don't remember the exact date. There was arrests made for illegal gambling." He could not remember if November 14, 2007 was the date the arrests were made; however, a document did refresh his recollection that this was the date. In response to the Court's inquiry, Charlson said that this was not the Shaffer arrest.

Charlson agreed that three people were arrested on November 14, 2007, for promoting gambling. The arrests were as a result of an investigation commenced prior to November 14, 2007. Charlson said that when the notification was made by Kalloff to the 120 Precinct, he said that he spoke to the commanding officer of that precinct. He was not aware of Sheehan telephoning Vice to check on the status of the operation, and said that the type of question that he asked would have dictated whether the phone call would have been brought to his attention. Charlson indicated that the November 14, 2007 arrests involved the same undercover officer whose identity was compromised. He agreed that the officer had been in the bar before and spoken with the arrested individuals. He recalled the name [REDACTED] to the extent that it was "on the paperwork" but could not recall who she was.

Charlson said that while he reviewed paperwork, he did not do any. He indicated that the paperwork outlining the undercover operation was not typed by any of the

detectives under his supervision. When shown a six-page document faxed from Captain Kearney, Charlson said that Kearney was the Commanding Officer of Brooklyn South/Staten Island Vice Squad. He also said that he has never seen the paperwork before and indicated that if Kearney's name was on it "then he probably prepared it."

Charlson reiterated that he was informed that Shaffer knew of the operation by [REDACTED] on December 12, 2007. He acknowledged the fact that Shaffer placed a second bet with the undercover officer on December 11, 2007 at 8:30 pm but cancelled it the following day on December 12, 2007. Charlson agreed that Shaffer cancelled the second bet on the same day that [REDACTED] informed him that Shaffer knew about the undercover. He said his last dealing with [REDACTED] was on December 14, 2007, when he observed him meet with Shaffer. Subsequent to this, IAB took [REDACTED] over as a confidential informant. Charlson was not present for the IAB debriefings of [REDACTED]. [REDACTED] was used by Charlson's unit for a total of four operations which yielded four arrests—three on November 14, 2007, and Shaffer's arrest in March of 2008.

Undercover Officer No. 5601

Undercover Officer 5601 ("UC 5601") was not required to give his proper name and during his testimony a screen was put up in the courtroom so that he could not be seen by the public while on the witness stand. UC 5601 has been a member of the Department for eight years. He currently holds the rank of detective and has been assigned in his present command for four to five months. He was previously assigned to the Brooklyn South/Staten Island Vice Squad for two years where he worked as an undercover officer investigating prostitution, gambling and untaxed cigarettes. In that capacity, he participated in over 50 operations.

On December 8, 2007, UC 5601 attended a tactical meeting conducted by his unit to discuss an operation at [REDACTED]. He indicated that [REDACTED] was a confidential informant who was to introduce him to the owner of the bar. He explained that [REDACTED] owned the building that housed [REDACTED], which was owned by the same owner of [REDACTED]. UC 5601 said that he spoke to [REDACTED] for about 25 to 30 minutes. [REDACTED] told him about the gambling in the bar and furnished names of people who were involved. Additionally, he and [REDACTED] "formulated like a back story of how we know each other" in addition to a plan with respect to entering the bar.

UC 5601 detailed the events between the December 8, 2007 tactical meeting and December 11, 2007. He testified that he first went to [REDACTED] with [REDACTED] in order to gamble and buy cigarettes. Shaffer was not there, so he spoke with the bartender, Mike. [REDACTED] told Mike that UC 5601 was there to gamble and buy cigarettes. Mike made a telephone call to a person he claimed was named [REDACTED]. Thereafter, Mike and UC 5601 made a deal for cigarettes and agreed on a price. He handed pre-recorded buy money to Mike who "put the money underneath the register in an envelope underneath the counter of the register."

At one point, [REDACTED] telephoned Shaffer from inside the bar. [REDACTED] told Shaffer that UC 5601 was interested in gambling and handed the telephone to him. UC 5601 said that the person on the phone said, "[H]ey, what's up? My name is Chris [Shaffer]" and in reply, said, "...I told him that I wanted to put money down on the upcoming boxing event which is Ricky Hatton. I put \$200 down on Hatton to win." Shaffer told him "...no problem. He said if you lose or if you win, he goes you can either meet me at [REDACTED] or you can meet me here at [REDACTED]. So I was like, okay,

great..." UC 5601 then played "Joker Poker" inside the bar, an unlawful game that he described to be "like a video game that you put money in and if you win—a lot of the bars, if you win extra credits on it, the bar pays you out." UC 5601 testified that all of the foregoing occurred on December 8, 2007.

UC 5601 subsequently lost the bet. He received a phone call from Shaffer on December 11, 2007 on his U.C. cell phone, a number that was provided to Shaffer on December 8, 2007. He told Shaffer that he would pay him and the two made arrangements to meet after 8:00 pm at [REDACTED] Later that night, the two met. There was no pre-established plan of how the two would identify themselves to each other inside the bar. UC 5601 testified that Shaffer appeared to be nervous and scared, and that "when I handed him the money that I owed him, his hands were actually shaking." He added that Shaffer "immediately put distance between us" by walking around the other side of the bar. He asked him continuous questions about how he knew [REDACTED] where he lived, how he made a living and what he did in Staten Island. UC 5601 and Shaffer then began to talk about card games and Shaffer told him about "Texas Holdem games that he can get me into within Staten Island." UC 5601 told Shaffer he wanted to put money down on an upcoming Giants game and Shaffer said "no problem" and took him over to a computer at the end of the bar and went to a website called Jerrys.com, an overseas gambling website based out of the Caymans. Shaffer placed UC 5601's bet into the computer in the amount of \$550 and told him, "...pay me if you lose. If you win, come back, I will give you your money." He then left the bar. On this day, UC 5601 was alone [REDACTED] was not with him nor were any other undercover officers.

The following day, December 12, 2007, UC 5601 testified that he received a

telephone call from Shaffer. He said:

He called my phone, and he was real nervous. He is like, I can't gamble with you anymore, I don't want to take any more of your bets. [REDACTED] knows where you can go. I am not doing this any more. You have the wrong guy. I just did it as a favor. I am just not doing it. I said what about my money? If I win, I want my money. He is like, no, no, no, forget it, forget it. I go, if I lose, do you want your money? I don't want to be a deadbeat, I will give you your money. He is like no, no, no, don't worry about it, don't worry about it, and he just hung up the phone on me.

UC 5601 reiterated that Shaffer was completely disinterested in the outcome of the pending bet that the two had entered into. This was reported to then-Sergeant Charlson. UC 5601 then called [REDACTED] and left a message for him. When [REDACTED] returned his phone call, he said that Shaffer believed he was a police officer and was aware of a police operation being conducted in the bar and added that he was on video on security cameras. [REDACTED] did not tell UC 5601 how Shaffer knew he was a cop.

Subsequently, UC 5601 was "immediately told not go to back to Staten Island ever again, and I haven't been back there since." He said two months later, he was transferred to Manhattan South Vice. He testified that he is concerned for his safety because [REDACTED] told him that he was videotaped in the bar.

On cross-examination, UC 5601 testified that on December 8, he was in [REDACTED]. He agreed that he had been in [REDACTED] prior to that date as part of an undercover operation. He acknowledged that as a result of the operation at [REDACTED] arrests were made at that location. UC 5601 could not recall if he was present for the arrests on November 14, nor could he recall how many arrests had been made as a result of the investigations of [REDACTED] and [REDACTED]. He believed it occurred in 2007 but could not recall the timing, and added that it occurred "well before" he met

[REDACTED] UC 5601 testified that he was present for an underage drinking operation at one of the bars but did not think anyone was arrested as a result of that operation.

On questioning regarding the November 14 arrests at Beer Goggles, UC 5601 agreed that [REDACTED] were arrested on that day. He was present for the arrests “down the road in a car.” He acknowledged that the arrests were subsequent to him entering the bar on that day and gambling. After a document refreshed his recollection, UC 5601 agreed that the arrests took place at 6:45 pm and that he was present in the bar before that time. He was unsure of the volume of patrons in the bar during the day. UC 5601 reiterated that he was gambling in the bar on November 14, specifically, that he was playing “Joker Poker.” He then said, “I was going to get paid out, but the bartender told me that the owners weren’t around to pay out the machine.” UC 5601 left [REDACTED] and a backup team entered to make the three arrests. He was unaware that one of the three arrested was Shaffer’s girlfriend.

Subsequent to November 14, UC 5601 returned to [REDACTED] ‘once or twice just to, you know, play the Joker Pokers and stuff like that...underage drinking and stuff like that.’ He agreed that playing Joker Poker would require him to spend money and acknowledged that the money did not come out of his own pocket. Rather, he said, he completes an expense report for money. UC 5601 was unable to present any expense reports from November 14 to December 12.

UC 5601 agreed that when he was in [REDACTED] he asked people questions. Upon meeting Shaffer, in person on December 11, he asked him questions “mostly about gambling.” The two also discussed who owned the bars, card games and the Jerrys.com website. UC 5601 testified that he knew Jerrys.com originated in the Caymans, so he did

not think that he asked Shaffer of its origination. After reviewing his report to refresh his recollection, UC 5601 agreed that he asked Shaffer of the website's origin. He admitted to having a "lengthy" conversation with Shaffer, the substance of which comprised an illegal gambling operation. Shaffer also told UC 5601 that he could get him into poker games.

Regarding his prior testimony that Shaffer appeared nervous on December 11 when UC 5601 went to pay him for the bet that he had lost, he agreed that it was not indicated anywhere in his report. He reiterated that Shaffer's hands were shaking and he was trying to "get away" from him, and that the two then proceeded to discuss the Jerrys.com website. UC 5601 said that he believed that Shaffer was "a little suspicious" of him because he was asking repetitive questions that he had already asked [REDACTED] [REDACTED] He said, "Like he wanted to know—like me and [REDACTED] had it all worked out like where we met each other and how we knew each other," and later found that [REDACTED] had been asked the same questions by Shaffer. UC 5601 indicated that he established a "story line" with [REDACTED] before meeting Shaffer in anticipation of questioning his background.

In conducting operations in bars, UC 5601 said that he "usually" goes by himself and is not accompanied by a "ghost." He agreed that December 8, 2007 was the first day that he had contact with Shaffer and was three days before their in-person meeting on December 11. He acknowledged that Shaffer had "some type of ownership interest" in [REDACTED] and [REDACTED] indicating that he was present at the latter on December 8. UC 5601 reiterated that Shaffer was not present on that day, that he spoke to a bartender about and bought illegal cigarettes and played Joker Poker. He was not paid

out from the Joker Poker game because he said, "At that point, I didn't even ask to see really if it paid out. I don't think I asked. I just wanted to see if the machines themselves were illegal." UC 5601 was asked, "Is a [Joker Poker] machine illegal in and of itself, or isn't it illegal only if they actually pay out?" He explained that there were two schools of thought. Some believe that the machine becomes unlawful once it gives extended credits and others believe that there must be a pay out to make it unlawful. UC 5601 said "I just go by what I'm guided by, and at the time I was guided by they said if the machine gets extended credits, the machine itself is illegal." He agreed that he would have to play the machine in order to determine if it extended credits.

UC 5601 reiterated that on December 8, he went into the bar, bought illegal cigarettes, spoke with Shaffer on the phone and placed a bet and then three days later met with him and talked about poker games and the Jerrys.com website. He claimed the poker game information was volunteered by Shaffer in response to UC 5601 telling him that he formerly gambled at another Staten Island bar. In reviewing his paperwork, UC 5601 testified that Shaffer claimed that he could get him into a "big card game." UC 5601 again reiterated that Shaffer was nervous and suspicious.

UC 5601 testified, again, that he was informed by [REDACTED] that he had been videotaped in the bar and that there was a possibility that his face could have been discerned.

UC 5601 indicated that he has been to an SLA hearing once and said he last saw [REDACTED] two weeks ago. He said, "I had to go to SLA court for [REDACTED] I think it was, [REDACTED] or [REDACTED]. Chris Shaffer was there and [REDACTED]" He claimed to speak to [REDACTED] briefly outside the court. Shaffer was inside. UC 5601

was at the SLA court for the purpose of offering testimony. At one point, both Shaffer and [REDACTED] were in the courthouse.

Police Officer Robert Santangelo

Santangelo has been a member of the Department since July of 1998. He is presently assigned to Viper 10 and was previously assigned to the 120 Precinct from July of 1998 to April of 2008. He had been assigned to the 120 Precinct midnight conditions unit from June of 2004 to February of 2008 during which time the Respondent was his supervisor.

Santangelo served as his driver for a year and a half, from the summer of 2006 to February of 2008 and the two enjoyed a "good relationship." While they spoke "occasionally" off-duty by telephone, they did not spend time together outside of work.

Duties performed by the precinct's conditions unit included bar enforcement. Santangelo said that the unit concentrated on "the college bars on [REDACTED], on [REDACTED] [REDACTED] and cited [REDACTED] and [REDACTED]. He indicated that [REDACTED] and [REDACTED] were among the most problematic, resulting in complaints about "kids urinating in the street, loud noises, underage drinking." In order to address these complaints, Santangelo said that the conditions unit would conduct visits at the locations to determine if any violations existed. The unit looked for underage drinking, loud music and fights and would prepare summonses and/or SLA reports for violations.

Santangelo acknowledged that he knew of the undercover Vice operation of [REDACTED] [REDACTED] and [REDACTED] prior to December 11, 2007. He learned about it from the

Respondent towards the end of the year, “[a]pproximately the end of November, December.” He received this information while he was on-duty.

Santangelo knew of the Respondent’s off-duty business as an exterminator. He said the Respondent had just started up an exterminating company and that he was getting a lot of business throughout Staten Island and Brooklyn and New Jersey. He was unaware of how many business accounts the Respondent had, but knew that he had accounts within the 120 Precinct and claimed that the Respondent said that “his business was growing rapidly.” He recalled that the Respondent “on occasion...did do a couple of jobs” for [REDACTED] or [REDACTED]. He also performed services for [REDACTED] on one occasion, but the bar later closed. Santangelo said that none of the other members of the unit knew of his extermination jobs because the Respondent was not “that close with other members of the team.” While Santangelo agreed that the other members knew about his off-duty employment, he claimed that they did not have “specific knowledge” about it.

Santangelo never saw the Respondent “pass out” advertisements for his business. The Respondent told him that the business expanded by word-of-mouth. When asked if he ever witnessed the Respondent receiving phone calls requesting extermination services within the 120 Precinct, Santangelo indicated that “on occasion” the Respondent’s phone would ring at night and he would inform the caller “I can have somebody there for you in the morning.” He said that this only happened a “few times.” On questioning regarding his knowledge about the Respondent exterminating [REDACTED] or [REDACTED] Santangelo said that the Respondent “would have one of his men” perform the extermination. He was able to recall one occasion toward the end of 2007 that he

observed Chris Shaffer request the Respondent's services in person. Santangelo stated that the Respondent would have "somebody else" exterminate [REDACTED] and [REDACTED] and knew of one person, Eddie, to be the Respondent's "main person."

Santangelo said that he knew Eddie to be the Respondent's employee because he observed him wearing a shirt with the name of the Respondent's company on it.

With respect to other relationships that the Respondent had with the staff of [REDACTED] and [REDACTED] Santangelo said that the Respondent's sister was a bartender at [REDACTED]. The Respondent told him that "she had just started working there" around the fall of 2007. Santangelo also indicated that he is familiar with retired Police Officer [REDACTED] formerly assigned to the 120 Precinct. Santangelo said that while he and [REDACTED] were never simultaneously in the conditions unit, they did work the midnight patrol shift together. At one point, the Respondent supervised [REDACTED]. Santangelo said that he is also familiar with [REDACTED] [REDACTED]'s former partner. Both [REDACTED] and [REDACTED] were bouncers in bars such as [REDACTED], [REDACTED], [REDACTED]

Lounge and various other locations in Manhattan and on [REDACTED] Street. Santangelo and [REDACTED] had a friendly relationship and stayed in contact after [REDACTED]'s retirement.

Regarding Shaffer's March 2008 arrest, Santangelo testified that he learned of it from a telephone call from [REDACTED]. Specifically, [REDACTED] told him that both [REDACTED] and [REDACTED] were "simultaneously hit by Vice that evening." Additionally, he said that [REDACTED] informed him that an individual told Shaffer at the arrest, "[i]f you give us [the Respondent] we'll let you go." Santangelo said that he was off-duty when [REDACTED] called him, and he then telephoned the Respondent who was off-duty as well. He relayed to him the information that [REDACTED] gave him. Santangelo believed that [REDACTED] also called

the Respondent, as he explained that later that evening, the Respondent called him and said that Shaffer had been arraigned. Santangelo said that the arrest occurred within the 120 Precinct and he later found out that Shaffer was held at the 122 Precinct.

Santangelo acknowledged that he learned that the Respondent was suspended. He spoke with the Respondent after he was suspended and also after he had been interviewed by IAB. Santangelo said that the Respondent told him what happened and why he was suspended and that he was interviewed regarding "off-duty employment, bar enforcement, SLA activity, doing deliveries for cigarettes for the delis." The Respondent also said that he was questioned as to whether he supplied information to Shaffer about the undercover Vice operation. Santangelo informed the Respondent that he was scheduled to be interviewed by IAB, and he testified that the Respondent told him to tell the truth.

During his interview, Santangelo indicated that no promises were made to him in exchange for information about the Respondent, nor was he threatened if he did not provide information against the Respondent.

On cross-examination, Santangelo said that he was threatened during his Official Department Interview. He testified that during the interview, "at one point the tape was stopped. The inspector—the captain (Carione), didn't like the answer I had given and he stopped the tape, told me I know you're F'ing lying to me. You keep lying to me, I am going to have your job. I am going to suspend you. I am going to make sure you are fired." Prior to being told the foregoing, Carione had asked him if he was ordered to stay away from [REDACTED] or [REDACTED]. Carione also said, "we know there was an

undercover operation going on inside the bars and that we (the conditions unit) were ordered to stay away."

Santangelo agreed that Carione started to tell him what he believed happened. He also acknowledged that he used foul language in the process, and threatened to have his job. Because his wife was seven months pregnant, he was concerned about losing his job and was worried about being suspended and losing medical coverage. He reiterated that it was Carione who threatened him, and reaffirmed that he was scared.

At the onset of his interview, Santangelo agreed that his attorney and delegate informed him that there was a possibility that he could be suspended or fired. Santangelo acknowledged that prior to the interview he was furnished with warnings about false statements. He understood the warnings and intended to tell the truth. Santangelo said that within the first five to ten minutes of his hour-and-a-half interview, he was asked the question about whether or not he had been told to stay away from the bars.

Santangelo did not recall Carione telling him that he would not accept an answer that he gave to a question. After reviewing the transcript of his interview, Santangelo agreed that Carione said that he would not accept his answer that he did not hear conversations between the Respondent and Shaffer. Santangelo also testified that Carione told him that he knew that he had been told to stay away from the bars involved in the undercover operation, "[w]hen, in fact, I was never told to stay away from the place." He added that he was told this in "a threatening tone." After reviewing his interview transcript, Santangelo agreed that Carione told him that he knew that the Respondent warned Shaffer of the Vice operation and that he put the undercovers life at risk. Santangelo acknowledged that the foregoing were statements made by Carione and

were not questions.

During the interview, Carione insinuated that Santangelo could be in as much trouble as the Respondent because he was his driver. Santangelo agreed that Carione stated to him "come clean because it's one thing to take a hit, it's another to lose your job." He testified "I did not want to lose my job. With everything going on in my life, I did not want to walk out of that room suspended." He said that he wanted to please Carione and tell him as much as he could that he knew to be the truth. Santangelo testified that "[a]t the end of the [interview], he had said anything that you said right now isn't a lie. It's not a lie until I stop the tape. Once I stop the tape, then it's a lie."

Santangelo acknowledged that the aforementioned statements and warnings given to him by Carione were not made at one portion of the interview. Rather, he said, they occurred throughout the entirety of the interview and were in response to instances when he did not have information about what was being asked of him.

Regarding the Respondent's sister, Santangelo was aware that they had a falling out and had some "strong disagreements." He has never seen the two in each other's company, nor did the Respondent ever speak about seeing her socially. Santangelo said that the Respondent spoke of his sister negatively and never suggested that he got her a job at a bar or was trying to assist her. Santangelo said that he felt that the Respondent "didn't want to see her ever again."

Santangelo reiterated that he was made aware of an undercover operation in [REDACTED]  
[REDACTED] and [REDACTED] He agreed that Carione asked "a lot" of questions about this undercover operation at his March 2008 interview. Santangelo recalled specifying during the interview that he was made aware of the operation sometime in November or

December. He furnished this answer after Carione had stopped the tape. Santangelo testified that he did not have a specific recollection but believed it to be in November or December. He then said that it could have been September or October. Santangelo said that all that he had been apprised of regarding the operation was "that there was an undercover in one of those locations, and that was it." He did not know the target of the investigation or what it concerned. He agreed that when the Respondent told him of the operation, he did not have many details about it. The Respondent never said that he wanted to warn anyone of the investigation.

Santangelo recalled a conversation that he had with Respondent's counsel prior to testifying. He recalled at that conversation, and reiterated that the Respondent did not tell him that an undercover operation was taking place at [REDACTED] or [REDACTED]. Rather, Santangelo deduced that those were the locations from the Respondent telling him of an operation "in the area." Additionally, the Respondent never mentioned that Vice was responsible for conducting the operation and Santangelo agreed that a number of units could have been conducting the operation. He reiterated that the Respondent did not provide him with specific details or the name of the bar where the operation was taking place.

Regarding the Respondent's extermination business and whether the Respondent performed work at [REDACTED] or [REDACTED], Santangelo testified that the extent of his knowledge about this was that the Respondent told Shaffer that he would "have one of his people come over or somebody come over to do the job." In response to the Court, Santangelo said that this conversation occurred in person, outside and in front of either [REDACTED] or [REDACTED], towards the end of 2007. Santangelo agreed that the

Respondent never said that he would perform the work himself, and agreed that during his Official Department Interview, he indicated that he claimed that the Respondent would send an "outside person" to perform the work. He acknowledged that the "outside person" could include someone who freelances.

On questioning regarding the Respondent's relationship with Shaffer, Santangelo acknowledged that during his interview, he said that the Respondent spoke with Shaffer about SLA enforcement. Carione countered, stating that he knew that the Respondent worked for Shaffer. Santangelo testified that he has never seen the Respondent be paid by Shaffer, nor has he seen the Respondent perform any favors for Shaffer. Additionally, he said that the Respondent "thought that Shaffer was an idiot." Santangelo said that no leniency was afforded to Shaffer during SLA enforcement, and that he was issued summonses "almost every time [the conditions unit] went into the [bar]." Santangelo said that he has never seen the Respondent work for Shaffer, and they never discussed if he profited from Shaffer.

Regarding the conversation that Santangelo observed between the Respondent and Shaffer about extermination, he said this conversation was not initiated by the Respondent. Rather, Shaffer approached him and asked about the service. Santangelo testified that because the Respondent was the unit's supervisor, it was not an uncommon occurrence for him to speak to bar owners. The majority of the conversations with the bar owners focused around the Respondent telling them to "straighten out your act" and to "keep the kids out of the bars."

Santangelo worked with [REDACTED] at one point and had a favorable relationship with him. He acknowledged that [REDACTED] called him when Shaffer, the owner of the bar where

he worked, was arrested. He did not find this odd because [REDACTED] called him often.

[REDACTED] did not ask Santangelo to do anything for him; the telephone call was informative in nature. [REDACTED] told Santangelo that Shaffer was told, following his gambling arrest, that he would receive help in exchange for providing information against the Respondent. Santangelo thought this unusual because the Respondent had already been suspended from duty. During this phone call, [REDACTED] did not ask Santangelo to make any phone calls to anyone, including the Respondent.

Subsequent to receiving the phone call from [REDACTED] about Shaffer's arrest, Santangelo called the Respondent. He relayed to him what he learned from [REDACTED] specifically, that Shaffer had been arrested and told that he would receive assistance if he provided information against him. In describing the tone that the Respondent used during the call, Santangelo said he was "very surprised." When he made the call to the Respondent, Santangelo was unsure if he knew where Shaffer was being held. Later that evening, the Respondent called Santangelo to say that Shaffer had been arraigned. He did not find it odd that the Respondent knew this. The Respondent did not ask him to obtain any information for him, nor did he act in an unprofessional manner.

Santangelo was aware of the falling out between [REDACTED] and the Respondent. Specifically, he said that [REDACTED] was "kicked off the conditions team" as a result of an "argument or a fight that he had with the Special Operations Lieutenant." [REDACTED] indicated to Santangelo that the Respondent was responsible for his removal from the conditions team and further, that he was not happy about being removed. Santangelo also said that he was familiar with Officer Daddio, another individual that had a falling out with the Respondent. He testified that "most people tended not to get along with [the

Respondent]. Some people got along with him well, other people tended to stay away."

Santangelo said that the Respondent was aggressive in his enforcement efforts. He occasionally would yell at Shaffer, and sometimes treated him harshly. Santangelo claimed that the Respondent and Shaffer did not enjoy a cordial relationship. In the year-and-a-half that he was the Respondent's driver, Santangelo never observed him share information with Shaffer, solicit him for business or seek to obtain assistance for his sister or family. He concurred that the conversations between the Respondent and Shaffer centered around bar enforcement and a single occasion of Shaffer asking about extermination. Fees were never discussed during the extermination conversation.

Subsequent to Santangelo's Official Department Interview, the Respondent did not "debrief" him about what happened. Additionally, he never suggested what Santangelo should say, other than to "tell the truth, because if I don't they are going to end up suspending me."

Santangelo reiterated that he was never told by any party that the undercover operation was being conducted by Vice, nor was he told that Shaffer was the target of this investigation. He also said that he was never told that SLA violations should be issued to patrons only as opposed to the bar owners, and claimed that the bars "always received a summons" whenever underage drinking was observed. Santangelo testified that he personally issued Shaffer SLA violations, but could not recall issuing one in October of 2007. He agreed that he issued "a number" of summonses to bars in the fall of 2007.

Santangelo agreed that the Respondent told him that he performed extermination work in Staten Island, Brooklyn and in New Jersey. He was unsure if the Respondent had informed him that he worked in apartment buildings within the 120 Precinct, but

indicated that he had "accounts throughout Staten Island." In response to the Court, Santangelo said that he did not know where the accounts were located but that they existed both within and outside of the 120 Precinct. The Respondent never identified [REDACTED] or [REDACTED] as one of his accounts. Regarding the building that houses [REDACTED] Santangelo said that there are apartments attached to the bar as a separate structure. He indicated the apartments have a separate entrance from the bar, a different address, and that you can not pass through the two locations.

On further questioning regarding his Official Department Interview, Santangelo said that he was very nervous, due to his wife being pregnant. He reiterated that Carione said that "he would have me suspended... [and] come after me and have me fired." He indicated that he perceived this as a threat.

On redirect examination, Santangelo testified that by his statement at his Official Department Interview that the Respondent would send an "outside person" to perform the extermination for Shaffer, it was his understanding that he was not going to do the work himself; that he would send "one of [his] guys." Santangelo was unaware if the Respondent had an account in the apartment building which housed the bar.

Santangelo reiterated that he felt that Carione used a threatening tone throughout his Official Department Interview. This tone caused him to be nervous and afraid. Despite this tone, however, he said that he was honest and forthcoming. He acknowledged that he testified that he felt a need to please Carione during the interview, and explained that this was because he was intimidated by him and wanted to remain on full duty.

Santangelo said that he is not afraid of or intimidated by the Respondent.

On examination by the Court, Santangelo said that he was represented by an attorney at his Official Department Interview. A delegate from his union was also present. When asked if he discussed his concerns with them, Santangelo said, "I thought that they would step up and say something. They just sat in the room and didn't say anything."

Santangelo testified that after the first instance of Carione stopping the tape, his attorney and delegate told him to "go into more detail" with his responses. They advised him not to provide "yes or no answers" to the questions that he was being asked.

Lieutenant Joseph Murray

Murray has been a member of the Department for 22 years. He is presently assigned to the Staten Island Investigations Unit and has been so assigned for eight years. He said that his duties encompass supervising sergeants who investigate cases of misconduct.

In September of 2005, Murray acknowledged that an allegation was made by [REDACTED] against the Respondent. [REDACTED] called IAB and the case was assigned to Lieutenant [REDACTED], who has since retired from the Department. [REDACTED]'s investigation was supervised by Lieutenant [REDACTED], who has also since retired. Murray said that he was familiar with the investigation of the Respondent because he "heard [REDACTED] and [REDACTED] discuss this case, and at the end I sat in on the GO-15 hearing of Sergeant Lewis."

Murray testified that an investigation revealed that [REDACTED] lived at [REDACTED] [REDACTED] a building which was owned by the Respondent and located within

his precinct of assignment. [REDACTED] paid the Respondent rent. Murray learned this by speaking to [REDACTED] and reading the case file. The investigation also showed that the Respondent did not submit a change of residence form. Murray explained that [REDACTED]

[REDACTED] is on [REDACTED] within the confines of the [REDACTED]

The investigation into [REDACTED] revealed that it was a three-family building. Murray explained that [REDACTED] went to Borough Hall and performed a computer search and determined that the Respondent was the owner of that building. He believed that he purchased the building on September 14, 2004. Murray described the building as being "wood-framed" with a basement apartment in the cellar, and a flight of stairs which led to two apartments with a "double bell."

Department records and information provided by the Respondent in his Official Department Interview<sup>6</sup> revealed that prior to his association with [REDACTED] [REDACTED] he lived at [REDACTED] in the [REDACTED] section of [REDACTED]. In the [REDACTED] At his interview the Respondent claimed that he was having marital problems and was involved in divorce proceedings. As a result, he had to leave his house at [REDACTED] and needed a place to live, so he purchased the [REDACTED] building. Regarding the complaint made by [REDACTED] the Respondent acknowledged that tenants were living in the [REDACTED] building and rent was being collected. The Respondent indicated that he did not personally collect the rent; his girlfriend Ms. [REDACTED] a licensed realtor did. Murray said he read in the case file that [REDACTED] went to the [REDACTED] building and interviewed a Mr. [REDACTED] who said that he was a tenant in the building.

Murray reiterated that he conferred with [REDACTED] and [REDACTED] about this case. He

<sup>6</sup> Conducted on March 28, 2006

explained that he was designated to represent the case as [REDACTED] and [REDACTED] had retired. He said that he reviewed all of the worksheets as well as the tape and transcript of the Respondent's Official Department Interview. Murray said that the Respondent indicated that his intention to purchase the [REDACTED] building was to live there. He only stayed at this location for 20 days as he moved in with Ms. [REDACTED] hereafter, at her residence at [REDACTED]

Murray testified that the Respondent lived at [REDACTED] at the time of his Official Department Interview. Department records still indicated that he lived at [REDACTED]

[REDACTED] In addition, the Respondent did not change his address on his driver's license, vehicle registrations or on any of his bills. Murray said that the investigation was substantiated based on "all the evidence that he didn't change his driver's license, or his credit cards, or any other identification, or even with the Department, he didn't notify them that he changed his address to [REDACTED]

[REDACTED] He added that the building was a three-family residence and even if the Respondent resided in one apartment, two rentals still existed in the building and that was a violation.

The distance between the [REDACTED] building and the Respondent's [REDACTED]" Murray said that he, [REDACTED] and [REDACTED] found the fact that the Respondent failed to submit a change of address form significant in that once the form was filled out, the Department would have been alerted to the fact that he was [REDACTED] and in a three-family residence. Murray said that the change of address form is supposed to be completed at the time a member of the service moves, and the form "should be

available in any precinct." He indicated that once it is completed, it is submitted to the precinct's Administrative Lieutenant or the Commanding Officer. Murray said that the Respondent was not asked why he failed to submit the form.

On cross-examination, Murray acknowledged that he was not the investigator for this case, nor did he supervise the investigation. He agreed that [REDACTED] was the investigator and was supervised by [REDACTED]. Murray indicated that the decision to substantiate charges against the Respondent rested with [REDACTED] and the unit's commanding officer, Captain Laschack. He was not part of the decision to substantiate the charges; however, Murray claimed that "we would...you know, bounce ideas off each other."

Murray indicated that [REDACTED] was the complainant who made the allegation against the Respondent. She was not interviewed. [REDACTED] was "the only person who was significant" that was interviewed.

Murray said that no one at the Respondent's command was interviewed to determine if he informed them that he had moved because he was involved in a divorce. Murray agreed that the fact that the Respondent failed to change his address with DMV gave the appearance that he was trying to keep his new address a secret, but also agreed that the investigation did not seek to determine if the Respondent was "open to people" that he had moved.

During his Official Department Interview, the Respondent claimed to choose the [REDACTED] building because he was able to afford it with the limited amount of money that he had. Murray said that the [REDACTED] He indicated that during the investigation, no one sought to speak with the Respondent's

commanding officer, Inspector Bruno, or his supervisor, Sheehan, to determine if they had been apprised of his move.

Murray indicated that it is not a Patrol Guide violation for a member of the Department to have a tenant living in their house. When asked in his 22 years of experience in this Department if he knew of such a circumstance, he testified that he was "sure there are" but he did not know of any personally. Murray believed that the language of the Patrol Guide relevant to this case was that it prohibited the purchase of "real property within your precinct of assignment...[f]or the purpose of renting." Murray agreed that the Respondent lived in the house for a couple of weeks before deciding to move in with his girlfriend. He also acknowledged that he was aware that when purchasing a house, there is a gap between contract and closing. Murray was unaware if the Respondent purchased the house for cash or financed it and his investigation did not seek to determine this.

There was no indication that the Respondent posted advertisements for apartments. Murray acknowledged that the two tenants in the house lived there prior to the Respondent purchasing the building. He was aware that tenants had to be evicted by the Respondent for not paying rent, and to do so, he went to court and used a city marshal. Murray reiterated that the Respondent said that he did not collect rent; rather, it was his girlfriend's responsibility. He did not know if she was successful in collecting rent.

The Respondent put the house up for sale prior to his Official Department Interview. Murray recalled that he said that the house had been for sale for approximately a year-and-a-half at the time he was interviewed. Accordingly, he agreed

SERGEANT WILLIAM LEWIS

that the house was for sale beginning at the end of 2004 to the beginning of 2005, shortly after it was purchased. Murray was not aware that the house is currently in foreclosure.

Murray acknowledged that this case was received in September of 2005. He said that on December 19, 2005, Carione contacted [REDACTED] and requested that he hold off on his investigation of the Respondent. A similar request occurred again, on January 17, 2006. Murray indicated that Carione is not a member of his command, nor was he involved in the investigation. Carione was not notified that Murray's command had a pending investigation against the Respondent, nor was he aware of anyone else making a notification to him. Murray testified that it was not unusual, however, that Carione was aware of the investigation because he said that IAB "[gets] all the logs generated everyday for everything... [if] they had another investigation involving Sergeant Lewis...they saw that we had this log, and for some reason Captain Carione didn't want us to interview him until he finished some part of his investigation." In March of 2006, Carione told Murray's unit he had clearance to interview the Respondent. Carione did not provide any instruction not to interview other members of the Department.

Murray testified that "Ms. [REDACTED] was taped,<sup>7</sup> Mr. [REDACTED] was not taped." He never heard this tape and was unaware if it had been destroyed. During the investigation, Murray said that [REDACTED] went to Borough Hall to conduct an inquiry on the building. He was not sure what was inquired there and he was not sure if he went to the Department of Buildings. Murray testified that he did not see any documentation indicating that the premise was a one-family house.

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<sup>7</sup> The Department stipulated that there is no recording of the interview.

Sergeant William Lewis

The Respondent has been a member of the Department for 24 years. He is presently assigned to the Fleet Services Division and has been for about the past years. Prior to this assignment, he was assigned to the 120 Precinct for 12 years where he served as the conditions sergeant for 11 years.

As the conditions sergeant, the Respondent testified that he worked the midnight tour, from 11:05 pm to 8:02 am. He said that his duties encompassed precinct conditions such as prostitution, graffiti, underage drinking, burglaries and grand larceny of automobiles. With respect to underage drinking conditions, the Respondent said that he and his team conducted enforcement in bars and social clubs and addressed underage drinking and noise complaints in those establishments. The conditions team received assignments from Inspector Bruno, the precinct's then-commanding officer, who the Respondent spoke to two to three times weekly. The Respondent said that he conducted enforcement operations in "almost every bar in the north shore of Staten Island." When asked if any bars were particularly problematic, he indicated that most of them were.

In response to the Court, the Respondent acknowledged that [REDACTED] was problematic. He said that [REDACTED] was "not so much" as troublesome as [REDACTED]

[REDACTED] He said that the establishment depicted in RX D was [REDACTED], and indicated that he was familiar with the layout of this bar. When asked to explain the vantage point of the camera shown on the video, the Respondent said upon entering the establishment, the bar is "straight ahead, and then the camera would be to the left" of the entrance in the corner. The entrance to the bar is to the right and the camera to the left and above.

On continued direct examination, the Respondent said that while he focused on [REDACTED] and [REDACTED] it was not his function to "shut the bars down." He said that his enforcement efforts via SLA's and summonses served to provide the Department's Legal Bureau with "ammunition" so that they could close the bars. The Respondent recalled that he focused on the two bars and was trying to shut them down for two years. He characterized the bars as "a nightmare to the community." In elaborating, the Respondent said that the two bars generated numerous complaints concerning "a lot" of underage drinking, "a lot" of urinating on people's property, and loud noise and music. The Respondent testified that on one occasion, he discovered a locked room intended for underage drinking on the second floor of [REDACTED] where he found a "room full" of underage "children, kids" inside. The Respondent issued summonses and SLA violations on this occurrence to patrons as well as Shaffer, the owner.

The Respondent testified that he and his team were usually "undercover." That is, they were attired in plain clothes consisting of the color of the day, a shield, and gun belts. The Respondent reiterated that he did not make determinations to shut down problematic locations. Rather, he said, his role was to have his officers go into an establishment for the purpose of identifying the patrons, determining who the proprietor was and if any violations existed. Specific locations for enforcement were relayed by the precinct's commanding officer, who obtained his information from community council meetings and telephone complaints from residents. The Respondent testified that there was not a requisite number of summonses that had to be issued to trigger the closure of a

bar. He noted that if three or more summonses were issued for underage drinking violations, then an establishment would be "on his way to be closed down."

Regarding his off-duty employment, the Respondent claimed to be familiar with the Department's requirements. He said that a member is required to apply for off-duty employment and wait to receive an approval. He said that he has engaged in such employment for the last 20 years, and has performed security jobs, worked in warehouses, cigarette companies and as a licensed exterminator. The Respondent claimed that he is currently authorized to work off-duty for Richmond Wholesale Cigarettes and for his own company, All Platinum Pest Control. He has been authorized by the Department to work for Richmond for the past three years and he was not aware of any period of time where he has not been authorized to work for that company.

The Respondent has been a licensed exterminator for the last three to four years, and maintains his own company, All Platinum Pest Control. The Department has authorized him to perform exterminating services under this company, and he did not recall a period of time where he has not been authorized to work as an exterminator. The Respondent recalled being served with charges and specifications pertaining to a lapse in his off-duty employment authorization. He did not recall the time period in question, but after reviewing a document, indicated that it was about August 1, 2006 to August 31, 2006. He agreed that his application was renewed and approved subsequent to this period. The Respondent added that for the last 20 years, he has submitted the necessary paperwork for off-duty employment. I indicated that for the period in question, he forgot, and apologized to the Court for the lapse.

The Respondent testified that he used to work for a delicatessen, Shop and Save

Deli, in Staten Island and heard of an opening at Richmond. He spoke with the owner, received the position and left the deli. He indicated that Shop and Save is not associated with Richmond, nor did he know anyone at Richmond. He works for a "man named [REDACTED] at Richmond and specified that there is a "whole bunch of [REDACTED]" there. He works for [REDACTED]. The Respondent explained that his duties at Richmond include assembling orders for different stores in the morning, such as cartons of cigarettes, bottled water, candy and juices. In the afternoon, the Respondent said that he delivers the orders and presents the owner with an invoice for the goods. He said, "if they decide to pay, they pay me. If not, they sign the bill and I'm gone."

Richmond pays the Respondent on an hourly basis and he is a part-time employee. He said that he receives about \$115 per check on a weekly basis and works 10 to 15 hours a week, sometimes more or less. The Respondent acknowledged that Richmond gave him an opportunity to earn additional money on commission. He explained that he and his girlfriend were informed that if they generated new accounts and sold merchandise, they would receive a commission. The commission for each carton of cigarettes is one dollar, and "the other stuff...is very, very little." Richmond Wholesale is located within the 123 Precinct. The Respondent was unsure of how many accounts they have, and said that he makes deliveries to different establishments daily. Some of these establishments are located within the 120 Precinct, the Respondent's former command. The Respondent indicated that he typically left Richmond's warehouse to make deliveries between 12:00 pm and 1:00 pm, and returned between 2:30 pm and 2:45 pm.

The Respondent agreed that his work with Richmond has made him familiar with

merchants in Richmond County. He indicated that on occasion, he has been asked to collect a debt on behalf of Richmond. He testified that he would be asked to stop by a particular location because "the guy has an envelope for you, just pick it up and bring it back." He said that he would rarely be told if a merchant's account was past due, and has never told a merchant that their account was past due and needed to be paid.

The Respondent admitted that he knows [REDACTED] and [REDACTED]. He said that he has exterminated their store and made deliveries to them, both in the course of his off-duty employments. He knew their store as [REDACTED], a deli, and recalled [REDACTED] Bagel<sup>8</sup> to be the name. The Respondent testified that his extermination services were "cancelled...because of something I wouldn't do." He explained that [REDACTED] and [REDACTED] had received a summons and asked him to "squash" it, a request that he refused. On another occasion, a bus drove through the front window of [REDACTED] Bagel in an apparent auto accident. [REDACTED] and [REDACTED] asked the Respondent to have the police report adjusted to reflect an inflated amount of property damages to the store, something the Respondent also refused to do. The Respondent acknowledged that [REDACTED] and [REDACTED] were aware that he was a member of the Department, a sergeant, because he mentioned it in friendly conversation while making deliveries or exterminating the store. He claimed that [REDACTED] and [REDACTED]'s requests were an attempt to take advantage of him and ask him to alter Department documents. The Respondent did not take any police action regarding their requests or make a report to his supervisors.

The Respondent testified that he is "legally" the sole owner of All Platinum Pest Control. He said that the business is incorporated as a "subchapter-S" corporation. The Respondent claimed to have been a licensed exterminator for the past three to four years,

<sup>8</sup> In response to the Court, the Respondent indicated this establishment was within the 120 Precinct.

just prior to incorporating his company. Previously, he worked for another company, Platinum Pest Control, of Westchester where he performed services in that area.

The Respondent's domestic partner, [REDACTED] assists him in the operation of his extermination company. The Respondent's company is listed in the telephone book, he maintains accounts, and sends exterminators "out" to perform services as needed. Presently, the Respondent supervises activities and maintains the accounts; he does not actively perform exterminating anymore and has not done so for approximately a year. The company functions 24 hours a day and the Respondent said that he dedicates "three to five hours [a week]...not even" to the operation of his company. He indicated that he never passed out fliers or advertisements to solicit business and did not recall Santangelo testifying that he had done so. While on-duty, the Respondent said that he takes telephone calls from [REDACTED] and not potential or existing customers. He said he has spoken to [REDACTED] "all the time" in front of Santangelo.

On questioning about his employees, the Respondent said that around March of 2008, he had anywhere from one to three. Pepitone was his most reliable at that time because he had a strong work ethic. The Respondent said he has "absolutely" characterized Pepitone as his "one good guy" and noted that others were "very lazy." Pepitone has worked for the Respondent for approximately two years and still presently works for him. He has requested Pepitone to collect payments on behalf of All Platinum, and the Respondent believed that he was a licensed exterminator. He did not know if Pepitone was licensed prior to March of 2008. The Respondent testified that his company has shirts and jackets which identify the company and he and his employees wear them. He said that while undercover, he has worn his All Platinum jacket as part of

his attire, and described it to have a "small logo on the left-hand side" and claimed that it was his winter jacket. Pepitone is required to wear the All Platinum attire as well.

In March of 2008, his business had approximately 300 accounts located in the five boroughs and parts of New Jersey. The accounts are comprised of both business and residential accounts. The Respondent agreed that the businesses Around the Clock, Bay Street Bazaar, Victory Superette, and Bagel Time were accounts of his. He said that within the 120 Precinct, he had five to ten business accounts, and he never conducted extermination at [REDACTED] \$[REDACTED] or Blue Lounge. The Respondent indicated that Santangelo was mistaken when he testified that he had accounts at those locations. He explained that on one occasion, Santangelo was speaking to [REDACTED] and Shaffer came up to their vehicle and "started talking about exterminating. He said he had a rodent problem, he goes I need exterminating. I told him, Chris, call your exterminator, and I rolled up my window. And that was it." The Respondent testified he "absolutely" did not perform services at bars.

Shaffer does not own Blue Lounge and the Respondent reiterated that he does not service that establishment. He testified that he does service the building which houses Blue Lounge "and that is it." He said he has never been asked to service the bar and it is owned by a different person than the owner of the building housing it. The Respondent said that the building which houses Blue Lounge is an apartment building and is one of his residential accounts within the 120 Precinct. He could not recall how many residential accounts he had within the 120 Precinct and said that his business receives many calls throughout Staten Island and has numerous residential accounts.

The Respondent indicated that he was familiar with [REDACTED] as they used to be

friends. In the past, [REDACTED] has hired the Respondent as an exterminator on two occasions for his apartment house, located "near" [REDACTED]. He clarified that this account is a residential account covering the building that encompasses [REDACTED] also located within the 120 Precinct. On inquiry by the Court, the Respondent said that [REDACTED] called him and asked for a favor in his building. He last exterminated for him "years ago" and does not currently have any business dealings with him. [REDACTED] told the Respondent that he could get him the accounts for [REDACTED] and [REDACTED]. The Respondent said that he told [REDACTED] "absolutely not" and explained that it would be a "big" conflict of interest. He noted that he does not perform work in any bars located in the five boroughs or New Jersey. The Respondent claimed that he did not refer another exterminator to [REDACTED] for these accounts.

The Respondent said that he did not provide Pepitone's name to [REDACTED] or anyone else. He said he had a conversation with bouncers from [REDACTED] who said that Shaffer was looking for an exterminator. The Respondent testified that he said he would ask a few exterminators that he knew if they were interested in doing work at Shaffer's bars. He said he told Pepitone "who freelances" and has a "side business," "another guy" who owns Safeguard Homes and "Tommy" who freelances for Safeguard. The Respondent said he later learned that Pepitone became Shaffer's exterminator. He did not believe that this could create a conflict because he told three different exterminators about Shaffer's bars, combined with the fact that he never referred Shaffer to Pepitone or gave out his name. The Respondent was not concerned that Pepitone could be connected with him.

Summons were issued at both [REDACTED] and [REDACTED] by the

Respondent's team. He felt that Shaffer's testimony about how many summonses he received was not accurate; that it was "probably more," between 40 and 60. The Respondent noted that it was very easy to find violations in Shaffer's bars. He said that the extent of his relationship with Shaffer was a conditions sergeant versus an owner of bars where he takes enforcement action. The Respondent recalled Shaffer's testimony that all of the summonses that he had received were either dismissed or adjourned in contemplation of dismissal, but claimed that it was not his job to keep track of the adjudication of the summonses that his team issued. The Respondent testified that the summonses that Shaffer received required him to appear at Criminal Court and also before the State Liquor Authority ("SLA").

Upon examination by the Court, the Respondent did not know why Shaffer's summonses were dismissed. He indicated that he was never asked to appear in Criminal Court, and added, "I do know they weren't all dismissed because they had shut him down at one point." The Respondent elaborated, saying that [REDACTED] was closed down for about a month, two years ago. The Respondent opined that Shaffer was "not totally let off the hook" because he claimed to have been fined and had to pay attorneys fees regarding the summonses he received.

The Respondent reiterated that he was aware a large number of Shaffer's summonses were being dismissed but that he did not know why. He again said that it was not his job to "follow-up" on the summonses, that he is just responsible for issuing them. The Respondent also said that it was not his job to appear in Criminal Court to monitor the proceedings, indicating that is the function of the precinct's Integrity Control Officer or the Special Operations Coordinator. The Respondent testified that he

"absolutely" reviews his subordinates completed summonses for accuracy, that he is on scene and directs the violations to be issued, and then collects the issued summonses at the end of the tour for delivery to the commanding officer. Sheehan, the special operations lieutenant, was apprised of the fact that summonses were being dismissed. The Respondent claimed that when he informed him of this, Sheehan "said nothing...shook his shoulders, and walked away."

The Respondent acknowledged that he became aware that Shaffer was looking to hire a bartender. He said that he overheard [REDACTED] and [REDACTED] speaking with Santangelo and remark that "the shit head (Shaffer) was looking for a bartender." [REDACTED] worked for the Respondent in his conditions unit for a short period of time. One evening, while having dinner at his parent's house, the Respondent learned that his sister was looking for a bartending job. He told his parents that they should tell her about the opening at [REDACTED]

[REDACTED] The Respondent claimed that he told his sister of a few different bars to try for positions, and claimed that he "couldn't care less" about where she worked. He indicated that the two have an unfavorable relationship. The Respondent later learned that his sister was working at [REDACTED] but he did not know when she started.

With respect to conducting enforcement at bars, the Respondent said that bartenders sometimes receive summonses. His unit has "absolutely" issued bartenders summonses, but he did not know if his sister had ever received one. No one in the Respondent's unit has ever issued his sister a summons and he noted that she worked on Saturday evenings, a "quiet night" in [REDACTED] and a day that the Respondent's unit was off. He knew that his sister worked Saturday evenings from his parents. The Respondent testified that he was not concerned of a possible conflict with his sister

working at [REDACTED] and said that he would issue his mother or father a summons if they worked at a bar and committed a violation. He said, "I have a job to do. I do it well." None of the Respondent's supervisors were notified about his sister working at [REDACTED]

Prior to receiving charges and being suspended, the Respondent said he was "not once" made aware of an investigation of [REDACTED] and [REDACTED] for gambling.

He said that he did not furnish anyone with any information about undercover operations at the bars to anyone and said that he does not "pass on" Department information. He recalled telling IAB that he would not know what another unit was investigating because of a lack of collaboration, explaining, "Your own detective units in the precincts don't even tell you what's going on in your own precinct." Around August of 2007, the Respondent said that Sheehan told him to cease enforcement "in the area" of [REDACTED]

[REDACTED] and [REDACTED] and never specifically identified those two bars. There are other bars in that area as well. The cessation of enforcement in this area lasted for about a few months, and the Respondent thought nothing of the directive because it was a regular occurrence. He was not given a reason of why to stop enforcement. The Respondent claimed that Sheehan was "mistaken" in his testimony about telling him that an undercover operation was being conducted at the two bars.

The Respondent said he has no relationship with [REDACTED], and believed that he was a retired member of the Department. He similarly said he has no relationship with [REDACTED]

In March of 2008, the Respondent received a telephone call from Santangelo [REDACTED] informing him that Shaffer had been arrested and that he should call [REDACTED] to find out the particulars. Santangelo told the Respondent that IAB raided [REDACTED] and [REDACTED]

mentioned his name and [REDACTED] felt that the Respondent should be told about it. The Respondent said he had [REDACTED]'s phone number from working with him in the past and called him because he was concerned about IAB mentioning his name. The Respondent reiterated that he had "no relationship" with [REDACTED] or [REDACTED] and said that his driver, Santangelo, was friendly with the two.

On questioning regarding the purchase of a home at [REDACTED] the Respondent admitted to purchasing it and acknowledged that it was [REDACTED]

[REDACTED] He attributed his purchase of the home to being involved in a "severe divorce, brutal" and said he had to leave his home and his children. He indicated that he had no place to stay and no money and responded to an advertisement in the newspaper which said "buy with no money down...purchase a home with very little or no money down." The Respondent said that the property was [REDACTED] and [REDACTED]

[REDACTED] This was particularly important to the Respondent because he was at risk of losing his automobile in his divorce. He subsequently purchased the building in about September of 2004. The Respondent admitted that he did not notify the Department of his move, saying that his life was in disarray at the time and that he forgot. He testified that he made attempts to locate the requisite form for a change of address at his precinct but he could not find it. He also claims that he informed his bosses and they too could not find the form.

The Respondent said that he looked for the change of address form during his move. He did not notify the Department of Motor Vehicles or change the address on his driver's license. Nor did he notify any of his creditors. The Respondent testified that he lived at the [REDACTED] address for 20 to 25 days before moving in with his

girlfriend on [REDACTED] in the [REDACTED] precinct. This location was not near the 120 Precinct and the Respondent said that he sold his truck and bought a new car "after they threatened to take away my truck." He only lived on [REDACTED] for a short period of time because he met his girlfriend and elected to move in with her. The Respondent acknowledged that when he moved into the [REDACTED] building, he "inherited" tenants who were already living there. They never paid rent to the Respondent. [REDACTED] a licensed real estate agent, attempted to collect rent from the two tenants in person. One tenant lived upstairs and the other downstairs in the basement. The Respondent resided on the second floor.

The Respondent reiterated that he had no personal relationship with Shaffer. It was not until Shaffer testified in this proceeding that the Respondent said that he recalled having telephone conversations with him "a few times." He claimed that he and his officers give their telephone numbers out to 25 to 30 bar owners and instruct them to "call us right away" before calling 911 if there are any problems. The Respondent recalled telling IAB that Shaffer never called him, that he never had a conversation with him, and that he called once and left a message.

On cross-examination, the Respondent indicated that he became a member of the Department on January 21, 1985 and was promoted to sergeant on November 25, 1997. He said that he is familiar with the off-duty employment regulations and has submitted paperwork for such employment twenty times over the past twenty years. He has never had a request for off-duty employment rejected. He agreed that he learned in an Official Department Interview conducted by Staten Island Investigations that his off-duty employment had lapsed. After learning this, he said that he filled out a renewal

application the day after the interview, submitted it, and it was approved. The Respondent is cognizant of the fact that he technically violated the Patrol Guide, but testified that each year, he is usually given a "heads up" by the captain's secretary at his precinct that he needs to file a renewal application. In this particular instance, he said it was an oversight and not done to deprive the Department of information. In the past, when he completed the off-duty employment forms, the Respondent reported that he was an exterminator working in Staten Island. He also said "everybody knew" that he was an exterminator. He was never told that he could not perform services within the 120 Precinct.

The Respondent said that he does not service any bars within his own command, or any other command. He has never solicited bars for business or used his position as a member of the Department to obtain business. With respect to the allegation made by [REDACTED] the Respondent said he was interviewed "a couple" of times regarding that allegation and his work for Richmond Wholesales. While he was asked about his job duties at Richmond, the Respondent did not recall being asked if he threatened [REDACTED] [REDACTED] nor did he believe their names were mentioned during any of his interviews.

The Respondent acknowledged an occasion where he went to [REDACTED] store accompanied by Felix Jones, another Richmond employee in order to make deliveries. Jones received a phone call, possibly from [REDACTED], to stop at [REDACTED] s store to pick up money. Jones told the Respondent, "[w]e just have to stop off at the store and collect some money." Upon arriving at [REDACTED] store, Jones spoke to him, and according to the Respondent, [REDACTED] was irate. Jones asked [REDACTED] if he had money for Richmond, and [REDACTED] just started screaming and yelling...I already paid, somebody else was there in the

morning...He went nuts." The Respondent asked [REDACTED] for the telephone in order to call the office. On the phone, [REDACTED] told the Respondent it was a mistake and to return to the warehouse after the deliveries were finished. [REDACTED] then spoke with [REDACTED] on the phone and Jones and the Respondent left the store. The Respondent maintained that nothing was said to [REDACTED], and he denied telling him that he had to "pay or else."

[REDACTED] a principal of Richmond, is Pakistani. The Respondent also noted that "the whole company (Richmond)" is Pakistani. He denied referring to [REDACTED] as a "Paki" and indicated that he would never make a statement of that kind. The Respondent testified that his "best friends are Pakistani. They are good people. I worked for [Richmond] for a while. They are really good people."

With respect to his purchase of [REDACTED] there was a period of two to three months between the time the Respondent responded to the ad in the newspaper and the time that he moved into the house. The Respondent agreed that a contract was drawn up, financing was obtained and a closing occurred.

He reiterated that his intention in buying the property was so that he would have a place to live and not for being a landlord. The Respondent moved out because his girlfriend was "bothering" him into living with her. He said he is happy living with her now.

Upon purchasing the [REDACTED] property, tenants were already living there. The Respondent had these tenants evicted through landlord/tenant court and via a city marshal. He added that after buying the property, within a couple of months, he "immediately" decided to sell it. The Respondent testified that [REDACTED] a real estate agent, attempted to sell the building but the deal fell through. As a result of the real

estate market, the Respondent has been unable to sell the building and it recently went into foreclosure.

The Respondent claimed that it was no secret in his precinct that he was living five blocks away. He said that his supervisors, Lieutenant Hoffman, the midnight platoon commander, and Lieutenant Davasario, the Integrity Control Officer were aware of his residence, in addition to others. The Respondent testified that his supervisors were aware that he was involved in a divorce and in conversation told them that he had moved. The Respondent reiterated his concern about having his car taken away and given to his ex-wife in his divorce. He sold this car and purchased another vehicle.

Regarding his sister, Dawn, the Respondent indicated that he has no relationship with her. He sees her once a year at Christmas when he sees his mother and father and that is the extent of the relationship. The Respondent said that he never asked Shaffer to hire her, although he learned that she worked at [REDACTED]. This did not stop him from conducting enforcement and issuing summonses there and the Respondent said he "couldn't care less" that she worked there. The Respondent indicated that he never directed anyone to do favors for Shaffer, [REDACTED]; [REDACTED] or [REDACTED]. He did not believe that it was a crime for someone to ask to have an accident report modified, referring to [REDACTED]'s request, nor was this a request that would have been required to be reported by the Respondent. Similarly, he believed that it was not a crime for someone to ask not to give them a summons. The Respondent agreed that an impropriety would exist only in a *quid pro quo* situation, not something that existed when [REDACTED] made his requests to the Respondent.

The Respondent said that he used to be good friends with [REDACTED] however,

the two had a falling out. He testified that the basis of the falling out was [REDACTED] destroying his bathroom and about \$200 missing from his house. The Respondent said that [REDACTED] "destroyed the bathroom" and a dispute arose. This dispute was settled when [REDACTED] refunded the Respondent's money. While the two remained friends after this dispute, the relationship differed in that the Respondent said they were more distant. However, they still spoke on the phone where [REDACTED] often complained about Shaffer and [REDACTED]

The Respondent testified that [REDACTED] had a problem with Shaffer because he was behind payments on his rent. Additionally, each time the bar received summonses, [REDACTED] s building would receive violations from city agencies causing him to have to pay money in fines. In sum, the Respondent said, Shaffer's bar was a "headache" to [REDACTED]. [REDACTED] asked the Respondent for assistance in getting [REDACTED] closed down; sometime in August or September of 2007, he asked if an undercover could be sent in. The Respondent told [REDACTED] that he could not get an undercover, but provided the contact information for the Brooklyn South/Staten Island Vice unit and told him to contact them. The issue never came up again and the Respondent did not ask [REDACTED] about it. The Respondent said that he never told [REDACTED] about an undercover operation and noted that he was not aware that one was taking place. He said if he had known, he would not have told [REDACTED] because he "could care less" and that he does not discuss Department business.

The Respondent acknowledged that he was told in about August of 2007 to cease enforcement in the area of [REDACTED] and [REDACTED]. He said that this was not an uncommon directive and this occurred every other month. He and his team "absolutely"

stayed away from the location as directed. During an Official Department Interview, the Respondent said that he was questioned by then-Captain Carione. He furnished Carione with copies of all SLA's that were issued by his team and Carione indicated that they were "garbage" and did not help at all. In August and September of 2007, the Respondent and his team did not do enforcement at [REDACTED] or [REDACTED] but were later told to return for enforcement at those locations around October or November of the same year. The Respondent and his team followed this directive and continued enforcement. The Respondent said he was never reprimanded for enforcement at the two bars during a time period that was prohibited and noted that he has "never been reprimanded since I have been on this job...I am a good soldier. Whatever I am told to do, I do..." Summons were issued at the two bars in October, November and December of 2007.

The Respondent characterized Shaffer as "pretty stupid" and said that he provided him with several warnings about his conduct which went "in one ear and out the other." He said that Shaffer is far from a friend and admitted that he has raised his voice and yelled at him. The Respondent testified that numerous times he has told Shaffer to stop allowing underage high school students to drink in his bars. He said that he has no role in the adjudication of the summonses that are issued to Shaffer and that the Judge makes that determination. The Respondent said he was never spoken to about summonses being dismissed, nor was he ever told to do his job differently. In fact, he said, his activities and evaluations were "well above average."

The Respondent said that he was never paid money from Shaffer, indirectly or directly and that he has never done exterminating for him. He later learned that Pepitone

had done work at his bars, which the Respondent said he received no money for. The Respondent did not know how much money Pepitone was paid for the jobs and said that he is not a full time employee of his. Pepitone works part-time for the Respondent's company as well as other exterminating companies. The Respondent denied giving Shaffer any law enforcement information and noted, "I wouldn't give him the time of day." The Respondent was unaware that illegal gambling was taking place at [REDACTED]

[REDACTED] and [REDACTED] and said that it was not something that he investigates.

Regarding his prior testimony that Richmond Wholesale gave him an opportunity to earn commission money, the Respondent said that he and his girlfriend obtained no new accounts.

On re-direct examination, the Respondent acknowledged that notwithstanding telling people in his command that he moved, he was still required to submit a change of address form. Regarding his belief that [REDACTED] stole \$200 from him, the Respondent said that he did not confront him because he did not witness it.

The Respondent said that he first met Raddicone in his duties as conditions sergeant because he formerly owned a bar called the [REDACTED], now [REDACTED]. [REDACTED] sold the bar shortly after the two met. The Respondent denied that he was reintroduced to [REDACTED] by Shaffer as an exterminator. With respect to his suggestion for [REDACTED] to call Vice, the Respondent said that he did not personally contact Vice because he already advised the Inspector and Sheehan of the problems at Shaffer's bars and they did not follow up with his recommendation for an undercover.

The Respondent claimed that he had a good working relationship with Sheehan and all of his supervisors. He said he rarely saw Sheehan because they worked different

tours. The Respondent never had a problem following Sheehan's instructions and added that all of his evaluations were above average. The Respondent reiterated that he was not given a reason why he should stay away from certain locations and that it was a routine request that occurred frequently.

Regarding the Joker Poker machines which appear in RX D, the Respondent said he did not know that they were gambling machines and reiterated that he did not know that gambling was taking place at the bars. He believed the Joker Poker machines to be "video machines."

Upon examination by the Court, the Respondent said that when he purchased [REDACTED] [REDACTED] he knew it to be a multi-family dwelling. When asked if there was a rule which barred members from residing in their precinct of assignment, the Respondent said that the rule changed "every so often" and said that there was nothing in the Patrol Guide prohibiting someone from living within the precinct.

On questioning about his off-duty employments, the Respondent said that it was his belief that his exterminating company was located within the 122 Precinct and Richmond Wholesale in the 123 Precinct. The Respondent said that in the many years he has been requesting authorization for off-duty employment, no one has ever informed him of any impropriety. It was his belief that the company itself could not be located within his precinct of assignment.

With respect to Pepitone, the Respondent acknowledged he is a part-time employee of his exterminating company. He indicated that he also has his own company, and works for another extermination company, Safeguard. While working for the Respondent's company, Pepitone wears a shirt with the company name on it. The

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Respondent said that he knows that Pepitone does not wear the shirt when he is not working for him "because he would come to my house every once in a while and he would change."

The Respondent's Case

The Respondent called Captain Joseph Kearney and Christopher Shaffer. Offered into evidence were complete telephone records in binders (which corresponds with DX 3, 4 and 5) as Respondent's Exhibit ("RX") A, B and C. Additionally offered in evidence was a DVD dated November 14, 2007 as RX D, and affidavits from Dawn Lewis, Edward Pepitone, Jr. and Felix Jones, as RX E, F, and G, respectively.

Captain Joseph Kearney

Kearney is currently the Executive Officer of the 107 Precinct. He was formerly the Commanding Officer of Brooklyn South/Staten Island Vice Enforcement.

Kearney testified that he commanded the unit that conducted the investigation of [REDACTED] and [REDACTED]. He indicated that Charlson was the squad supervisor of the Brooklyn South/Staten Island team, which included UC 5601. Kearney agreed that he reviewed paperwork and created a chronology of the events of the investigation. He explained that he constructed a "bulleted list" which was a "quick synopsis or overview" intended for his division and bureau chiefs. The document was prepared "due to some allegation" against a member of the Department "just as a quick review in case people above me got asked questions." He testified that the bulleted list encompassed two "kite investigations" and it took him 20 to 30 minutes to construct the document. Kearney did not dictate the contents into a machine; rather, he typed it himself.

With respect to the list, Kearney explained that it is two pages and he updated it as the case progressed. He said that the synopsis was forwarded to his division and bureau chief. He said that he would review paperwork and then type what he believed to be the important parts in the paperwork. He agreed that this "bulleted list" reflected that a notification was made to the 120 Precinct's Field Intelligence Officer for the precinct to refrain from enforcement at [REDACTED] and [REDACTED]. In response to the Court's questioning about who made the notification, Kearney said, "If it was done, it would have been on a DD5, which would have been a kite investigation which specifically would have been done by the case investigator." The notation reflecting that the notification was made was based on information in the case file. When asked about the accuracy of the "bulleted list," Kearney said that he would have to "actually read the DD5."

Kearney said he was first notified that he was a potential witness in this matter about one month ago. He reviewed the "bulleted list" when he received it from the Advocate.

Kearney recalled a November 14, 2007 operation which resulted in three people being arrested at [REDACTED]. He recalled that the investigation was subsequently closed thereafter, only to be reopened on November 22. Kearney did not recall a notification being made to the 120 Precinct when this investigation was reopened. He was not present for the November 14 operation.

The video of the November 14 raid, in evidence as RX D, was played for Kearney. While he testified that he was familiar with Charlson as he was a former member of his team, he could not identify him in the video. He claimed that the face was blurred and all he could see was a "raid jacket."

At this point the Department stipulated that Charlson was in the video (T 1133).

Christopher Shaffer

Shaffer stated that he is an entrepreneur and owns two bars, [REDACTED] and Grill and [REDACTED] Tavern, both located in Staten Island. He indicated that his presence before this Court was compelled by subpoena.

Shaffer testified that he knows [REDACTED]. He said that he purchased [REDACTED] from him and that [REDACTED] is also the landlord of the building housing this bar. He indicated that he purchased the bar for \$80,000, and put \$5,000 down and entered into a payment plan. While the payment plan is coming to a close, Shaffer said that he still owes [REDACTED] money. There have been occasions where he has been behind on his payments, and at times, [REDACTED] has offered to buy the bar back or enter into a partnership with him. Shaffer described his relationship with [REDACTED] as "professional" and that he makes rent and loan payments to him. The two first met in "early 2004" when Shaffer was seeking to buy the bar from [REDACTED]

Shaffer met the Respondent when he purchased [REDACTED] and learned that he was "the sergeant in charge of conditions." He said the Respondent "inspected and raided my bars." The two had conversations, but were not friends. The substance of the conversations centered on the Respondent telling Shaffer to "clean this place up." He said that he was "very respectful" towards the Respondent because he was a police officer, but despite his efforts of being friendly, he was a "bit of a hard ass." He explained that the Respondent was not friendly in return, made his life "very difficult" and issued him numerous summonses. He did not have a business relationship with the Respondent, and never used him as an exterminator despite trying to do so. Shaffer

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testified that he had a problem with "rodents...a year or two ago" and knowing the Respondent was an exterminator, called him. He admitted that his motivation in calling him was to foster a better relationship. Shaffer said the Respondent said that he could not do anything and referred him to another exterminator, Ed Pepitone.

Shaffer spoke to Pepitone and explained that he had a problem with mice and fruit flies. He subsequently hired him and said that "he has been servicing my establishments ever since." Shaffer claimed that his relationship with the Respondent remained the same and did not change after deciding to use Pepitone's services. He said that he still kept receiving tickets. Shaffer said that he did not know of the Respondent receiving anything in exchange for Pepitone servicing his bars. He assumed that Pepitone was working for himself and there was never any indication that he was working on behalf of the Respondent.

Regarding the Respondent's sister, Dawn Lewis, Shaffer said that he met her a "year or two" ago. He said that it was "abundantly clear" that he was short bartenders. One of his bouncers told him that Lewis had recently graduated bartending school and was looking for a job. Shaffer interviewed her, met her personally, and hired her. Shaffer said he did not know that she was the Respondent's sister until after he hired her, six months to a year later. He testified that his hiring of her was based on the fact that "she was responsible, she was a stockbroker, she had held a full time job for many years, she graduated Bartending School, she was cute, she was personable." On inquiry by the Court, Shaffer said that he learned that Lewis was the Respondent's sister when he had the occasion to tell her that the bar had received a summons one evening. He told her that the Respondent was on the scene and learned that he was Lewis' brother. Shaffer

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learned that Lewis did not speak to her brother. He said that his employment of Lewis was not connected to the Respondent and that she still works for him.

Shaffer said that he spoke to the Respondent on the telephone "a couple of times. Maybe four or five." He believed that it was in 2006 or 2007. He explained that his first phone call was to inquire about extermination services. Other instances where he called the Respondent was for problems in the bar, "like a fight, or something getting stolen, anything like that. And I called him once because we had a 10 inch rat in the bar, and I lost Mr. Pepitone's phone number." Shaffer testified that he would call the Respondent directly as opposed to 911 because it was his understanding that records and statistics were maintained about 911 and 311 calls originating from bars. He said that it was his understanding that call statistics contributed to the rating of an establishment, and that the rating was examined "[w]hen places try to get their liquor license." He said that he believed calling the Respondent direct would "solve the problem without adding to my problems." Shaffer received the Respondent's phone number from one of three of his bouncers, [REDACTED], [REDACTED] or [REDACTED]

When asked if the Respondent has ever done any favors for him, Shaffer said, "No. Favors?" He testified that the Respondent made his life hard, "I'm still fighting tickets in the liquor authority court. I have paid thousands to lawyers, I spent—every ticket that he wrote or his team wrote, I had to appear in Criminal Court. So he has made my life very hard." Shaffer said [REDACTED] was raided around Veteran's Day in November of 2007. A porter, his "pregnant girlfriend, and the guy that was helping me out while I was out of town" were arrested in the raid. When the raid occurred, Shaffer was in Little Rock, Arkansas because his father had passed away. He learned of the raid

and the arrests from a phone call from a customer.

Shaffer testified that [REDACTED] was equipped with a surveillance system, accessible via the internet. While in Arkansas, he accessed the system and downloaded the video from the raid. He said that he watched it many times, certain segments more often than others. He said he made a copy of the footage by burning it onto a disk.

Shaffer recalled that he was introduced to an individual by [REDACTED] in December of 2007. He received a phone call from [REDACTED] asking for "personal favor" to allow his "old friend who had a tip on the fight tonight" to place a bet through his off shore account. He later met this individual in person at [REDACTED]. He said that Pete "walked in and gave me a handshake. In his handshake was \$200 which he lost on the bet." Shaffer said that Pete was friendly, and did not initially realize that he was probing him for information. He asked him if he liked poker and knew of any local games on Staten Island, and also asked if he hired prostitutes from Craig's List. He said that his girlfriend was also present. Before he left that evening, Pete indicated that he wanted to place a bet on an upcoming football game. He said that he placed \$500 on the Giants for Pete via a computer. Subsequently, Shaffer testified, Pete went outside and "raised up his right arm and jerked it down real quickly." He likened the motion to a one-armed yawn, and this made Shaffer suspicious. He followed him outside and watched Pete "jump in his car" and left quickly. Shaffer said that Pete made a turn in the opposite direction of Brooklyn, where he claimed to live.

Being concerned, Shaffer said he immediately called [REDACTED] to question him about Pete. Pete claimed to work on a coffee truck in Long Island, and [REDACTED] had previously said that he was a truck driver in New Jersey. Shaffer said that [REDACTED]

dismissed his concern, claiming that Pete was his friend. Shaffer remained concerned. He said that [REDACTED] seemed nervous on the telephone, and he also found it suspicious that [REDACTED] had previously called him and told him not to take "large bets" from his friend. Shaffer said that he shared his concern with one of his employees, [REDACTED] a former police officer in this Department. He testified that on the evening that Pete paid him the \$200 and made the second bet, he drove to Manhattan to a bar near New York University to meet [REDACTED]. He explained to [REDACTED] everything that had happened with Pete and asked if it was possible the police were investigating him. [REDACTED] said it was a "good chance." Shaffer did not recall the specific date of his conversation with [REDACTED] but reiterated that it was the same day that Pete paid the \$200. He claimed that [REDACTED] told him that if he was under investigation, it was likely that an undercover officer, a ghost, would have been accompanied by another individual.

Based upon his conversation with C [REDACTED] Shaffer asked his girlfriend if there was anyone in the bar that she did not recognize when Pete was in the bar, as his girlfriend was working as the bartender that night. Shaffer claimed that she saw an individual that she did not recognize "sitting in the sixth seat, and every time she looked at him, he would put his head down and take a bite of mozzarella sticks." Each time Shaffer's girlfriend looked at this person, he would put his head down. Shaffer then said, "[a]fter we put that together, I don't remember if it was while we were still with Ricky or not, she (Shaffer's girlfriend) said she thought she recognized both the ghost and Pete." Both Shaffer and his girlfriend proceeded to watch the surveillance video of her being arrested, several times.

In reviewing the surveillance video, Shaffer said that he saw his "pregnant

girlfriend in handcuffs and the police bashing my property and stealing my money." A portion of the video, which was received in evidence as RX D, was played for the Court. Shaffer provided a description of what was depicted:

There is one Broadway. There is one poker machine on the floor. The other—there were two poker machines there. They had already opened up one of them with a sledge hammer, and they may have opened up the other one with a sledge hammer there.

Shaffer indicated that the machines which were on the floor are known as "Broadway Pokers." He said one machine was face down on the floor, and another was standing in the right corner. Shaffer testified that the video revealed that the police brought in "one of those things they ram doors with" and proceeded to take "some tremendous swings at my machines and opened them up." He further said that two motherboards from a Joker Poker or Broadway machine were on the floor, and that he saw a "bald headed individual" counting money. At one point, "they threw the second Broadway" machine on the floor, and several people were handling money.

At one point during the video, Shaffer said that he recognized the undercover, Pete. He explained that before he met him, his focus on the video was of his girlfriend being arrested and the "police stealing my money." After viewing the video, Shaffer recognized the undercover and his "phantom" that was "eating mozzarella sticks" at the bar. He watched the video after his meeting with [REDACTED] on his computer, enough times to identify the undercover and his "phantom." Shaffer testified that he decided that [REDACTED] had set me up and I had just placed a wager for a cop, an undercover cop."

Shaffer also testified that when the police initially arrived at the bar his girlfriend was not present. He said that she arrived at the bar after the fact, and Pete and his "ghost" were

outside the bar, and cautioned her not to enter because the police were there. When she entered the bar anyway, she was arrested. Shaffer explained that after her arrest, she realized that the two people outside the bar; Pete and his "ghost," were the same individuals who he placed a bet with. He also said that his girlfriend saw them working with the police during the arrest. Shaffer added at one point, a bulletproof vest can be seen on the video being handed to the "phantom" by a police officer.

Shaffer testified that after he watched the video, he called the undercover, Pete. He told him that he "was not a bookie" and did [REDACTED] favor by accepting his bet. He said that he told Pete that he did not profit from his wagers and no longer wanted to accept bets from him or anyone else. He cancelled the December 11 bet and claimed to record this phone call.

Shaffer said that the Respondent never gave him any information that caused him to cancel the bet, nor did he have any discussion with him about gambling. He said that the Respondent's team issued his bar a summons on the evening that he made the second bet and received the \$200 for the first. After concluding that he placed a bet with an undercover, Shaffer said that he confronted [REDACTED] via telephone. He never discussed his concern with the Respondent.

Shaffer said that he was arrested at one point. He said members of IAB and Brooklyn Vice went to both of his bars simultaneously; he was at [REDACTED] Upon entering the bar, "they acted like it was a routine inspection...they checked the cigarettes...looked at bottles for fruit flies..." After receiving a ticket for a fruit fly violation, Shaffer testified that he was handcuffed by Carione, informed that he was under arrest, and said that he was kidnapped and taken to an Internal Affairs office in

Brooklyn. Thereafter, he said that Carione "told me if I cooperated that he could make all my problems with New York City government agencies go away, and if I didn't cooperate that I was going to go away for a long time."

Carione asked Shaffer about his landlord at another bar, [REDACTED] who Shaffer believed to be "mafia related." He was also questioned about the Respondent for about "four or five hours" and "they said they were trying to get bad cops off the street." Shaffer testified as to the questions that IAB asked of him regarding the Respondent:

They asked me if I ever paid him off, they asked me if I paid him protection money, they asked me if I was scared of him, they asked me if he had threatened me, they asked me if he was my exterminator, they asked me if I had ever spoken to him on the telephone, they asked me if my bouncers were taking money and giving it to him. They asked me if he told me that I had to hire his sister. There were many more, but that's the general.

Shaffer said he answered the questions asked of him and was truthful in his responses. He testified that he found the interview "ridiculous" because the Respondent was responsible for him receiving tickets and "for all the headaches" he had. He said he was made a promise that if he helped to "[get] Bill Lewis off the streets" his problems with the police would go away.

On cross-examination, Shaffer agreed that he testified that he was kidnapped by IAB. When asked to elaborate, he testified that he was not informed about why he was arrested or where he was going. He also said that he was "essentially" told that his arrest was contingent upon him supplying certain information. He reiterated that he was taken to Brooklyn and interrogated. After the initial interview, Shaffer admitted that he voluntarily returned to the IAB office in Brooklyn for another meeting. However, he said that he went so that "they would stop harassing me." At this second interview, Shaffer

said he was asked fewer questions than the first but agreed that they covered the same topics as the first such as his relationship with the Respondent. He denied being questioned about whether he had knowledge of an undercover operation being conducted at his bars.

Shaffer agreed that at the second interview he asked questions of IAB personnel. He said that he was concerned; specifically, he wanted to know if he was being investigated any further as his business was disrupted each time the police visited his bar. Shaffer asked if the police were going to be returning to his bar. He denied asking a series of questions at this second interview.

Shaffer denied admitting on direct examination that he "run[s] numbers" out of his bar. He admitted that he has engaged in gambling activity, and acknowledged that Raddicone introduced him to the undercover because he knew that he liked to gamble. Shaffer admitted that he has an off-shore account for gambling, but denied that he maintained the account to "further" his gambling. During the interview, he admitted that he may have discussed [REDACTED] but said that he was not the focus. IAB "definitely" brought up his name during the first interview, seeking information about [REDACTED]

[REDACTED] Shaffer denied telling IAB that he was afraid of Peterson and would "rather go to jail for a hundred years than to provide information about him."

Regarding the Respondent's extermination business, Shaffer claimed that he told IAB that he had asked the Respondent if he could take care of a rodent problem in his bar. He did not recall if he identified Pepitone as his exterminator during his interviews. He denied ever approaching the Respondent, telling him that he had a vermin problem,

and hiring him as an exterminator. Shaffer further disputed that he hired the Respondent as an exterminator because he hoped to garner a favorable relationship with him.

Shaffer acknowledged that he came to the conclusion that [REDACTED] set him up. He denied introducing [REDACTED] to the Respondent sometime in 2003 or 2004, and testified that he did not own the bar until mid-2004. He said that he did not know the Respondent in 2003 or early 2004, and added that [REDACTED] already knew the Respondent. Shaffer denied telling [REDACTED] that he paid the Respondent money ostensibly for extermination services, but in actuality, it was protection money.

With respect to Dawn Lewis, he said that he learned that she was the Respondent's sister "six months to a year after she worked [at the bar]." He was not sure if it was closer to six months or a year. He reiterated that he found out that she was the Respondent's sister when in conversation, he told her that the bar was raided and he received tickets. He explained that he told Dawn how unfair the Respondent was, and "she said, well, he's my brother essentially." Shaffer said that this was the first instance where he became aware of Dawn and the Respondent's relationship. He denied telling [REDACTED] that he hired Dawn because the Respondent "strong armed" him into hiring her, and similarly denied that the Respondent approached him and told him to hire his sister or he would have to "deal with not giving her the job."

As a result of receiving numerous summonses from the Respondent's conditions team, Shaffer had to appear in court. He agreed that some of the summonses are still pending. He said that he never had to pay any fines, that the "criminal tickets issued by the precinct were either dismissed or given ACD's." In response to the Court, no conditions were attached to the ACD, aside from "just don't get in trouble for six months

and this will go away."

Shaffer acknowledged that before testifying, the Advocate asked if she could ask him some questions, a request that he declined. He also admitted that he said that he did not want to be present at this proceeding. Confronted with the fact that he was able to recall "all the details of what happened over a year ago" as he testified on direct examination, Shaffer said he remembered what he was interrogated about "pretty specifically." While he admitted that he had no difficulty recalling details asked by the Respondent's attorney, Shaffer maintained that he told the Advocate "the same thing here today that I told IAB a year ago."

Shaffer said that he does not have a good relationship with the Respondent and that the only reason he appeared at this proceeding was because he was compelled to do so. He admitted that he provided the Respondent's attorney with a video, RX D, but denied that he caused it to be published on "YouTube" under the title "NYPD Police Corruption at Its Worst."

On re-direct examination, Shaffer said that he did not give the video to the Respondent. He said he has never given anything to him and he has never had any interactions or conversations or meetings with him.

Regarding his belief that [REDACTED] set him up, Shaffer said that prior and subsequent to his arrest, he was "pressing [REDACTED] very hard." Eventually, he said, [REDACTED] told him that the investigation had shifted to the Respondent and that he did not have "anything to worry about." Shaffer testified that after his arrest, [REDACTED] "came totally clean with me" and admitted that he had several meetings with Carione in Brooklyn and that he brought Pete, the undercover, into the bar.

Shaffer explained his reason for voluntarily going to IAB for a second meeting. He said after his arrest, the police came to his bar “multiple times...pretend[ing] to be a conditions team.” He said that this would disrupt his business and all the patrons in the bar would leave. Shaffer said that on one occasion, Carione said, “I think you should come meet with us again.” He met with Carione so as to stop them from continuously going to his bar.

Regarding the video, RX D, Shaffer recalled the Respondent’s attorney asking if he would provide it voluntarily as opposed to being subpoenaed for it. He testified that the reason he provided the video was to avoid being subpoenaed.

On examination by the Court, Shaffer said that he did not show IAB the video because he feared that he would be retaliated against. He said that since the “video went out, my bar got hit six times in two weeks by Brooklyn Vice, so the retaliation came true.” Shaffer explained that he provided the Respondent’s attorney with the video, and he furnished IAB with it.

Shaffer identified the Respondent’s extermination company as Platinum. He indicated that Pepitone does not work for this company, and that he has his own company. He was unsure if Pepitone’s company was a corporation or a sole proprietorship. He said that the Respondent and his team were usually attired in plain clothes and that occasionally, the Respondent would wear a “Platinum” jacket.

On re-cross examination, Shaffer reiterated that he voluntarily went to IAB for a second meeting because they had come to his bar three times and caused everyone to feel uncomfortable. He said that there were two in-person interviews, and that Carione had called him on the telephone but he was “not sure if he (Carione) asked me questions or he

just asked me to come in." In response to the Court, Shaffer said that it was IAB that returned to his bar after his arrest, accompanied by Carione.

Affidavit of Dawn Lewis

Dawn Lewis did not testify at this trial. The Respondent has submitted an affidavit from her (RX E). In the affidavit Lewis states that she is the sister of "Sergeant Billy Lewis." She asserted that she and her brother are not close and see each other once a year at Christmas at their parents' home. She also stated that she went to bartending school over two years ago and was looking for a part-time job to make some extra money. She learned that [REDACTED] was looking for a bartender from her parents and from bartending school and proceeded to contact Chris Shaffer, the owner, who hired her.

The affidavit further states that she did not tell Shaffer that the Respondent was her brother and that she had no knowledge that the Respondent ever knew she worked at [REDACTED]. Further, she never saw him while she was working there.

Additionally, Lewis states, that she understands that her brother now stands charged with allowing her to work within the confines of his precinct. She asserts that if the Respondent had told her that she had to quit her job at the bar she would have told him that where she works is none of his business, that he does not pay her mortgage and that he cannot tell her where she can or cannot work.

Lewis also states that she has never been contacted by anyone from the NYPD or Internal Affairs to question her about this matter and that she submitted the affidavit voluntarily and without pressure or coercion.

Affidavit of Edward Pepitone, Jr.

Pepitone did not testify at this trial. An affidavit from him was submitted into evidence (RX F). In the affidavit Pepitone asserts that he is aware of the charges that the Respondent did business as an exterminator for [REDACTED] and [REDACTED]. He asserts that he has been working as a freelance exterminator for the past several years and in addition to his own contracts, he works part-time for a few different extermination companies including Safeguard Home Inspections, Fred Swetzky, and All Platinum Pest Control. He further asserts that about a quarter of the jobs he does are for the Respondent and his company, All Platinum.

Pepitone states that over a year ago the Respondent called him and told him that the owner of [REDACTED] and [REDACTED] was looking for an exterminator. The Respondent asked him if he was interested since he would not service any bars in his command due to a conflict of interest with his job at the NYPD.

Pepitone contacted Chris Shaffer and worked out a deal to exterminate both bars on a monthly basis at a rate of \$35 per visit. He still services both bars and does so independently of All Platinum Pest Control and the Respondent. He states that both bars are under his personal contract and that he never represented to Shaffer or anyone else that he was doing the job on the Respondent's behalf nor does the Respondent receive any percentage of the receipts from these jobs.

Lastly, he states that no one from the NYPD or the Internal Affairs Bureau contacted him to ask him any questions about this matter.

Affidavit of Felix Jones

Jones did not testify in this matter. An affidavit from him was received in evidence (RX G). In the affidavit Jones asserts that he is aware of the charges against the Respondent. He asserts that he works for Richmond Wholesale making deliveries and that he knows the Respondent from his employment there. He stated that "around June 2007" his boss [REDACTED] asked him to stop at [REDACTED] Boulevard to inquire about an outstanding balance on their account. The Respondent, who was in the van with him, accompanied him to the location. Jones states that he asked the owner, Mr. [REDACTED] if he had any payment for his boss. [REDACTED] became upset and said he had paid someone that morning. According to Jones, the Respondent then asked to borrow [REDACTED]'s phone and called [REDACTED] to confirm this.

Jones further asserts that after clearing it up with [REDACTED] they apologized to [REDACTED] and left. He states that "At no point did either of us threaten Mr. [REDACTED]."

Additionally Jones states that he did not hear the Respondent refer to Mr. [REDACTED] as a "Paki" and that he never heard the Respondent use that term. Lastly, he states that he has not been threatened, pressured or coerced to submit the affidavit.

Stipulations

Several stipulations were entered into evidence during the trial. One related to telephone records, Court Exhibit ("CX") 1, and one related to State Liquor Authority (SLA) summonses, CX 2.

Telephone Records

During the course of this trial various documents were received in evidence

purporting to relate to the telephone records of telephones belonging to the Respondent,

[REDACTED] and Schaeffer. The Department offered into evidence computer-generated summaries which purported to extract relevant telephone calls using a so-called Penlink computer program. These went into evidence as DX 3, DX 4 and DX 5.

The Department agreed that the original telephone records had come to the Department from the various telephone companies as digital files. They further agreed they had turned over the digitalized materials to the Respondent as part of the discovery process. The Respondent printed out these voluminous records and offered them into evidence as RX A, RX B and RX C.

The Respondent contended that some of the telephone calls listed in the Department's exhibits did not exist in the original telephone records. On December 11, 2008, when the trial resumed the Department indicated that it had checked the original records and it agreed that some of the telephone calls listed in their exhibits did not exist in the actual telephone company records. The Department thereupon offered into evidence DX 3A, DX 4A and DX 5A as corrected versions of the corresponding exhibits previously received in evidence. The parties also entered into a stipulation, CX 1, which states:

The parties stipulate that a review of the original phone records from the respective phone companies indicates that no phone activity occurred between Sergeant Lewis and Chris Shaffer from December 2007 through March 2008 however the phone records do reflect phone activity between Sergeant Lewis and [REDACTED] during the above period.

SLA Summons

On December 11, 2008 a stipulation was entered between the parties and entered

into evidence as CX 2. That stipulation reads as follows:

A review of the SLA activity between August 2007 and December 2007 reveals that SLA summonses were issued by the Conditions Unit of the 120 Precinct at the subject premises [REDACTED] and [REDACTED] on the following dates and to the following individuals:

<b>Date Issued</b>	<b>Issued To</b>
October 4, 2007	Patron/Other
October 4, 2007	Chris Shaffer
November 28, 2007	Chris Shaffer
November 28, 2007	Chris Shaffer
November 28, 2007	Patron/Other
December 1, 2007	Chris Shaffer
December 5, 2007	Chris Shaffer
December 12, 2007	Patron/Other
December 12, 2007	Chris Shaffer

It was agreed that a further stipulation would be forthcoming regarding August and September. Subsequently, on January 8, 2009, the parties agreed that there was no summons activity in [REDACTED] or [REDACTED] for those two months.

#### Rebuttal Case

The Department called Undercover Officer 5601 and Deputy Inspector Daniel Carione as witnesses in rebuttal.

#### Undercover Officer No. 5601

Undercover Officer No. 5601 testified that he participated in an undercover operation on November 14, 2007 at [REDACTED]. He said that when he entered the bar, he played the Joker Poker machines. He subsequently notified the sergeant that the machines were "no good." That is, he said, the machines "win extra credits...by chance, not by skill, and the bars usually pay off as you accumulate credits, they pay off the credits."

UC 5601 said that he was able to alert his sergeant about the machines while he was present in the bar with him. The field team subsequently entered the bar. When the field team entered the bar, UC 5601 said that he was still in the bar, and testified that he did not notice any females inside. He said that he chose to remain in the bar, ostensibly as a patron, when the field team entered to avoid looking "odd" as he indicated he was the only person in the bar. The field team pretended to check UC 5601's identification, and he then proceeded to leave [REDACTED]. He testified that he did not see any females on his way out. He went to his car located about a block-and-a-half away and remained there until he was contacted by the field team. UC 5601 said that as he was sitting in his car, he observed the field team "loading" a female into the prisoner van.

With respect to December 11, 2007, UC 5601 paid Shaffer \$200 for a previous bet that he had lost. After speaking with him, he left the bar. Shaffer followed him outside and stood by the entrance and watched him walk across the street and get in his car and drive off. UC 5601 testified that he drove away from the curb at a "normal rate of speed." He could not recall the direction he drove off in, but said it was to the left, opposite the front of the bar. He could not recall where he went, but said it was possible that his team conducted more enforcement on Staten Island.

UC 5601 testified that he used hand signals or gestures when he worked in a narcotics unit. He said that they were usually subtle references such as tying a shoe or taking a hat off. He indicated that such signaling would not be used in a bar enforcement setting because the bar is inside. He said, "Everything is verbal and there would be no reason to because it was a case buy so there is no reason to tell them it was positive that I gave him \$200 bucks."

On cross-examination, UC 5601 testified that he was with a field team on December 11, 2007. He said it comprises one sergeant, six investigators and two undercovers—nine people total. A prisoner van, an additional van, a leader car and a chase vehicle accompanies the team. UC 5601 indicated that the vehicles are not parked directly in front of the establishment; rather, they would be off to the side. He said that the supervisor who is monitoring the “kel device” is the only individual who would be close to the bar. UC 5601 agreed that he did not go to the bar alone, that he went to pay Shaffer \$200 and also to enter into another bet. There was no intention to arrest Shaffer that day. UC 5601 wanted to build a case against him, place additional bets and elicit information from him as to additional gambling spots. Even though no arrests were planned for that day, UC 5601 said that the prisoner van was there because “we probably went out and did other enforcement afterwards.” He did not remember if other enforcement was, in fact, conducted on that evening.

UC 5601 acknowledged that Shaffer watched him leave the bar. He reiterated that he did not use any hand signals. He said that he spoke to the Advocate about hand signals on the day that he offered this testimony and then said he spoke with her the previous day on the telephone about “hand signals and stuff.” UC 5601 thereafter agreed that he first discussed hand signals with the Advocate the day prior to being called as a rebuttal witness. UC 5601 testified that he had an opportunity to view the November 14 videotape of the operation, in evidence as RX D, two days prior to being called as a rebuttal witness. He said that he was not surprised to see the incident on video.

Regarding the November 14, 2007 operation, UC 5601 said that he was the only “patron” in the bar. To his knowledge, he did not know about any other patrons being

present. He reiterated it would have been suspicious for him to leave the bar, explaining that if he left the bar, followed by the police entering the bar, an individual could "put two and two together and say why did this guy just run out and the cops come in the door two seconds later." UC 5601 indicated that he does not have a guideline as to whether or not to stay in the bar; he said it depends on the situation. He said, "I play it by ear." He agreed that it was irrelevant that he was the only person in the bar, and that at one point, he left. He reiterated that he had no interaction with a female except for a female on the field team.

UC 5601 indicated that after the field team entered the bar, he remained inside for "a couple of minutes." The field team "made believe they were looking at my license." He said that in addition to himself, the ghost and the bartender were inside the bar. After giving a signal to Charlson, the ghost, UC 5601 believed that he made a phone call to the field team to move in. He could not recall how he contacted the field team. He reiterated that at the time he told Charlson that the machines were "no good," the only people in the bar were himself, Charlson and the bartender. When a field team enters a bar, they asked everyone for identification and "do whatever it is they do." They check individuals for warrants and question people. UC 5601 said that he would then contact whoever was in charge of the operation via telephone to identify who should be arrested.

UC 5601 reiterated that there were three people in the bar. He agreed that the field team questioned people in the bar, including him. He testified that when the team came in, he remained at the bar, and the team asked for his identification and questioned him about why he was there. He said the team pretended to "run" his ID and then they "cut me loose. I walk out of the bar." UC 5601 was not able to see the team questioning

him on the video but could see himself exit the bar. The field team had the bartender come out from behind the bar, but UC 5601 could not recall if he was behind the bar when he left.

UC 5601 said that when the field team entered the bar, everyone who was inside was a member of the tactical plan with the exception of the bartender. He agreed that he walked outside, sat in his car and waited for the field team to finish what they were doing. He explained that he was a block-and-a-half away from the bar and did not leave immediately, in case the field team needed him to make a positive identification. As he was only a block-and-a-half away, his vehicle was visible from the bar. From his position, UC 5601 was able to see the other cars that had accompanied the field team.

Charlson was UC 5601's ghost for the November 14 operation. He believed that Charlson left with him but he was not sure. He agreed that when Charlson served as a ghost, he was acting as an undercover. He also acknowledged that the goal of an undercover officer is to leave the operation without having a compromised identity. UC 5601 claimed that he left at the same time the field team left.

With respect to the second operation, on December 11, 2007, UC 5601 said that Charlson was his ghost again. On inquiry from the Court, UC 5601 agreed Charlson served in an undercover capacity on this date.

UC 5601 said that he "didn't see" Charlson on the November 14 video, RX D.

Deputy Inspector Daniel Carione

Carione testified that he debriefed Shaffer in March of 2008, following his arrest. He acknowledged that a second interview of Shaffer occurred, about one month after the

first interview. The second interview was arranged via telephone call to Shaffer, where he was "invited to the Brooklyn IAB office, at which point he agreed that he would come in and speak with us." Carione said that he extended the invitation to Shaffer.

Carione claimed that he did not make any promises to Shaffer. He said, "I used the word promise in that I could not promise him, and I was explicit with that." He explained that after Shaffer's arrest, "[Shaffer] was instructed as to what the purpose of [IAB] was...and I'd elicit his cooperation in the investigation we discussed previous. I instructed him that I could, if he cooperated, and in fact became a confidential informant, would be able to speak to the DA and hopefully gain some sort of cooperation with the DA in turn for his cooperation as a confidential informant." Carione said he did not make any other promises to Shaffer regarding SLA matters which were pending against him.

Shaffer was questioned about his knowledge of undercover operations in his bars. Regarding the first interview, in March, Carione said that he questioned Shaffer about whether the Respondent had disclosed information pertaining to undercover operations to him. He denied being informed this "unequivocally." Carione asked similar questions during Shaffer's second interview, and he "denied that [the Respondent] had disclosed the fact that there was an undercover there." Shaffer did not indicate during any of the interviews that he had observed video footage of the November 14, 2007 operation. When Carione questioned him about his relationship with the Respondent, Shaffer told him that the Respondent was his exterminator. He did not mention Ed Pepitone.

On cross-examination, Carione said that he did not author any of the memos that the Respondent's attorney had presented him with. He also indicated that he did not

document the interviews with Shaffer. Carione agreed that Crespo authored the worksheets and documented the interviews relative to this investigation. Carione did not review any memos or worksheets since he last testified, and indicated it was about a month-and-a-half ago that he reviewed notes pertaining to this case. Carione was aware that Shaffer's interviews had not been tape recorded. They were memorialized by Crespo and furnished to him via worksheets. Carione testified that he reviewed the worksheets for accuracy and that he would have informed Crespo if something was not reflected on them.

Carione acknowledged that the primary allegation in his investigation was that the Respondent tipped Shaffer off about an undercover operation. After reviewing the memos, Carione said that there were no worksheets reflecting that Shaffer was interviewed about the Respondent furnishing him with information. He further testified that there was documentation indicating that Shaffer had been questioned on this subject. Carione said that the worksheets showed that Shaffer was asked if the Respondent did any special favors for him, and agreed that they also showed that Shaffer provided "nothing of investigative value."

When questioned if he made Shaffer any promises, Carione reiterated that he "instructed him" that he would not make any promises. He explained that he told him that in exchange for his cooperation, he would speak to the DA regarding his arrest for gambling. When confronted with his prior testimony that he made a promise to Shaffer in exchange for his cooperation, Carione said, "I remember what I just stated to you."

Carione was aware that dissemination of confidential communications is a serious allegation. He said Shaffer was interviewed on "approximately" three occasions and

during the course of the interviews, claimed that Shaffer said the Respondent was his exterminator at the bars. Carione reiterated that Shaffer did not provide any information of investigative value. He testified that Shaffer's "admission" about the Respondent exterminating the bars should have been detailed on the worksheets. Carione again indicated that Shaffer never mentioned Pepitone, nor did he say that the Respondent had an employee perform the exterminations. Shaffer claimed to speak directly with the Respondent about his extermination needs and never said that the Respondent personally performed the work. According to a two page worksheet, Shaffer had claimed that somebody else did the work but he did not identify the person. He was not asked to supply this person's name. While Carione said that he learned who this individual possibly was, he did not attempt to confirm if they did, in fact, perform exterminating services for Shaffer.

On re-direct examination, Carione testified that the Respondent had referred to another worker, Pepitone, as "his best guy." Shaffer claimed to "contract" with the Respondent, but "it was made clear that it was not physically [the Respondent] that came into [exterminate] so to speak." Shaffer referred to the person who performed the exterminating as "one of [the Respondent's] guys."

On re-cross examination, Carione said that Shaffer never said that he paid money for exterminating to the Respondent. Shaffer claimed to pay the person who performed the service, and Carione never asked who this person was.

FINDINGS AND ANALYSIS

In this case, which covers multiple allegations of misconduct, there are heated factual disputes about many things. Nonetheless there are some areas where the parties are agreed about the fact and those points of agreement present a reasonable place to start this analysis.

It is undisputed, for instance, that the Respondent worked in the 120 Precinct on Staten Island and served as a sergeant in the Conditions Unit for 11 years until the inception of these charges. It is also agreed that during the course of his employment there, he purchased a building within the confines of that precinct which had rental units in it.

It is also undisputed that he had permission to engage in outside employment that included work as a pest exterminator and as an employee of a wholesale company, Richmond Supply, which sold cigarettes and other items to grocery stores. It is also undisputed that his permission for off-duty employment lapsed some time around August 1, 2006 because he did not timely apply for an extension and that an extension of his permission to engage in off-duty employment was granted on or about August 30, 2006. Thus there was a period of about 30 days during which he was engaged in off-duty employment without permission.

It is not in dispute that except for the period noted above the Respondent had permission to engage in off-duty employment. The Respondent acknowledged that his exterminating company, All Platinum, did work in residential and business premises some of which were in the confines of the 120 Precinct and that some of his work for Richmond took him to stores in that precinct. It should be noted that he denied doing

exterminating work in any bars and he specifically denied engaging in exterminating work at [REDACTED] and [REDACTED] which is an issue that will be addressed in connection with several of the specifications.

It is also undisputed that [REDACTED] and [REDACTED] were operated by Christopher Shaffer or that the building in which [REDACTED] was located was owned by [REDACTED] who was an informant for the Department's Vice and IAB units. It is also undisputed that [REDACTED] had done contracting work in the Respondent's home, that the Respondent was unhappy with the work done and that [REDACTED] had to return money to the Respondent. Also it is undisputed that [REDACTED] was unhappy with his tenant Shaffer.

Further it is undisputed that Richmond did business with a grocery store located at [REDACTED] Boulevard on Staten Island variously referred to in the record as [REDACTED] Grocery or [REDACTED] Bagel and owned by [REDACTED] and [REDACTED]. It is also undisputed that the Respondent went to that store with another employee of Richmond and that the issue of money owed by the owner of that store to Richmond was discussed. The details of that encounter are in dispute and are the subject of one of the specifications herein and will be discussed later in this decision.

It is also undisputed that the Respondent had at some point performed pest exterminating services at the [REDACTED] Boulevard store and that it is in the confines of the 120 Precinct.

It is undisputed that the Respondent's sister, Dawn, worked as a bartender at [REDACTED] on a part-time basis for the past few years.

Additionally, it is undisputed that in the course of his work as a sergeant in the

Conditions Unit the Respondent supervised the issuance of summonses at bars and other establishments within the confines of the 120 Precinct including [REDACTED] and [REDACTED]

[REDACTED]

The uncontested facts paint a picture of a member of the service whose personal and outside business interests were, at least in some measure, interwoven with his professional police responsibilities. It is hardly surprising that such a situation resulted in the complaints and allegations which brought him here. The question for this Court is whether the evidence established the specific charges brought against him by the Department.

Disciplinary Case No. 82873/07

The simplest specification to address is found in this case. The Respondent is charged with one specification involving his failure to have permission for off-duty employment between August 1, 2006 and August 31, 2006. The Respondent has pleaded Guilty to this specification, and offered in mitigation his testimony that he has had authorization for off-duty employment for many years, that it lapsed without his realizing it, and that when he became aware of the problem he immediately remedied it. The Respondent noted that the Department promptly granted his request and that the total period of the lapse was 30 days. Accordingly the Respondent is found Guilty as charged.

Disciplinary Case No. 82103/06

Specification No. 1 of this docket alleges that the Respondent "did wrongfully purchase and owned [sic] real estate for rental purposes" within his precinct of assignment. Specification No. 2 in that docket alleges that he changed his residence and

failed to submit a form indicating his change of residence. Both specifications allege that these events took place on or about and between September 1, 2004 and May 3, 2006.

The Respondent admits that he failed to file a change of residence form, as required and acknowledges his guilt with regard to Specification No. 2 of this Docket.

With regard to Specification No. 1, the Respondent has interposed both a factual and legal defense. The Respondent's claim is that when he purchased the house he did not do so with the intent of it being a rental property. His intent was for that house to become his residence and that he did reside there for a period of time. Subsequently he moved out of that house to live with his girlfriend. His factual argument therefore is that he did not purchase the property for the purpose of renting it and consequently that section of the Patrol Guide is not applicable in this situation.

The first portion of his legal argument is that the specification does not track the language of the section of the Patrol Guide with which the Respondent is charged. That section, 203-13 Page 1 Para 5, prohibits the purchase of rental real estate but does not contain the word "own" as alleged in the specification.

The second part of legal argument is that the prohibited conduct, the purchase of the property, occurred more than 18 months before the service of the charges and consequently whatever the Respondent's intent was at the time of the purchase; prosecution under this section is time-barred.

The Patrol Guide is just that, a guide. It is impossible to anticipate every situation that will arise in the complex environment of New York City and in the lives of members of the service. As such the Patrol Guide is not subject to the strict interpretation. It is the context of the rule that must be examined.

The purchase of rental property is not a static act, following the purchase there is ownership. The obvious purpose of the rule against purchasing rental property in the precinct of assignment is to avoid potential for conflicts of interest. Those conflicts are interwoven with the status of an officer as a landlord in the precinct where that officer exercises police power. Consequently any interpretation of this section includes not just the purchase but the ongoing ownership of the rental property and the insertion of the word "own" into the specification is appropriate.

As such it is a continuing offense as long as the officer continues to hold the property and work in the precinct. The Respondent continued to own the property and work in the same precinct within the statutory period. Consequently the Statute of Limits had not run at the time the charges were served with regard to this specification and the Respondent's motion to dismiss on that ground must be denied.

It is now necessary to address the Respondent's factual argument. When he purchased the building there were, by his own admission, two rental apartments in it in addition to the apartment in which he resided. Thus while he intended, he says, to reside there he also intended to be a landlord. According to his own testimony the Respondent resided in the building for only 20 days. While the Respondent indicated that during this period of time his life circumstances changed due to his divorce and then his moving in with his girlfriend, nonetheless his short stay in the rental building does support the view that it was purchased as an investment and not a residence. Whatever his motivation he purchased and continued to own a rental property in his precinct of assignment.

The purchase and retention of this property violates the Patrol Guide and the

prosecution is not time barred; consequently, the Respondent is found Guilty of Specification No. 1 and No. 2 in this case.

Disciplinary Case No. 83810/08

This case presents a series of charges covering several diverse events. It encompasses an alleged intimidation at the [REDACTED] Bagel store (Specification No. 6), failure to report that his sister worked at a bar in his precinct (Specification No. 4), charges related to off-duty employment activity (Specification Nos. 1, 2 and 3) and divulging an undercover investigation (Specification No. 5). I have re-arranged the charges to present them in the clearest fashion.

A. Intimidation

Specification No. 6 alleges that the Respondent "on or about June 11, 2007, engaged in conduct prejudicial to the good order efficiency or discipline of the Department in that said Sergeant attempted to collect debts from an individual known to the Department on behalf of a third party in an intimidating manner."

The essence of this charge is a claim that the Respondent went to a store, [REDACTED] Bagel, with another man, to collect money owed to his employer Richmond Wholesale and that he did so in an "intimating manner."

On June 16, 2007 Crespo interviewed [REDACTED] and his partner [REDACTED] about the incident. Crespo testified that [REDACTED] said he felt "very nervous, very intimidated, and stated to me that [the Respondent] came in there like he was a big tough man to collect a debt." He also said the discussion ended when [REDACTED] called [REDACTED] the owner of Richmond Wholesale. Neither [REDACTED] nor [REDACTED] appeared at the trial. A redacted tape and transcript

were entered into evidence. The tape was redacted because it included interviews with both [REDACTED] and [REDACTED] and it was agreed that [REDACTED] was not present when the alleged "intimidation" occurred consequently only the interview with [REDACTED] was offered in evidence (DX 1A and 1B).

A review of the tape and transcript of the conversation between [REDACTED] and Crespo indicates that [REDACTED] never used the word "intimidate." What he did indicate was that the Respondent yelled and screamed at him. He also said that he was nervous. [REDACTED] stated that the reason for this was that he didn't want to have a fight in his place of business. [REDACTED] made no reference to any threat to person or property, or to any act of violence on the part of the Respondent. Listening to his statement about a "fight" he did not seem to be referring to any threat of a physical altercation; his concern seems to be about having an unpleasant scene in his store.

This is supported by the fact the incident ended when the Respondent called his boss [REDACTED] and put [REDACTED] on telephone with him. [REDACTED] complained to [REDACTED] in front of the Respondent, something he would have been unlikely to do if he was intimidated. [REDACTED] then indicated that [REDACTED] apologized to him after he pointed out that he could take his business elsewhere.

[REDACTED] seemed most annoyed that the Respondent referred to him as "Paki" which he considered to be an insult. If this occurred [REDACTED] may have had every reason to have been offended but there is a world of difference between an unpleasant and offensive comment and an act of intimidation and the Respondent stands charged with intimidation not courtesy.

[REDACTED] was definitely angry at the Respondent but in attempting to understand what

the Respondent did to upset him one might look at what [REDACTED] said. As noted [REDACTED] never used the word "intimidate" but he did repeatedly say that he was "disrespected" and that seems to indicate what his grievance was about.

Although [REDACTED] knew the Respondent was a policeman "from somewhere" he indicated that the Respondent never mentioned that he was a police officer and never displayed his firearm or shield. The only things [REDACTED] said that had any link to the fact that the Respondent is a member of the service was that he did not like being treated like a criminal and at another point he said "if he is a policeman who cares, he has to respect me."

While Crespo may have felt that [REDACTED] was intimidated, the interview captured on the tape, which is the entire basis for this charge, does not provide evidence of it; either in the substance of what was said or, as was suggested by the Advocate, in the tone of [REDACTED]'s voice in describing the incident. On the whole, from [REDACTED]'s description of events, it sounds like they had a heated conversation but one that was nonetheless about business.

The conversation ended when the boss [REDACTED], preferred to keep a customer rather than press for payment of an outstanding debt.

[REDACTED] did not testify at this trial and was therefore not subject to cross-examination. There is no corroboration of the claimed intimidation or even for that matter his version of what occurred. The police were apparently not called and as far as we know [REDACTED] did not fire or discipline the Respondent as a result of this incident.

Crespo, whose investigation led to this specification, said that [REDACTED] did not attribute any specific statements to the Respondent which made him feel intimidated, aside from referring to him as a "Paki" on what Crespo believed was a purported telephone call to

[REDACTED] It was a purported call because Crespo did not believe that the Respondent actually called [REDACTED] and Crespo appears to have believed that [REDACTED] only spoke to [REDACTED] after the Respondent left the store.

But on the tape [REDACTED] makes clear that the Respondent called [REDACTED] in his presence and that he was handed the telephone by the Respondent.

The Respondent testified that he went to [REDACTED]'s store along with another employee of Richmond, Jones. He said Jones is the one who conversed with [REDACTED] about the payment. The Respondent denied using the term "Paki." The Respondent also submitted an affidavit by Jones which supported the Respondent's version of events. It is difficult to understand why [REDACTED] would make up a story about a conversation with the Respondent.

Indeed there is at some question about [REDACTED]'s credibility. He complained that the Respondent called him a "Paki" but the Respondent's employer at Richmond Wholesale, [REDACTED], is also a person of Pakistani origin and presumably would have taken offense at the Respondent's use of the term, yet, as noted, as far as is known, [REDACTED] took no action against the Respondent.

In her closing argument on this issue the Advocate stated that Mr. [REDACTED] "spent a large part of the interview recounting how he does not ever want Respondent to return to his store because he is afraid of him." Such a statement does not appear in the tape or transcript of the interview (DX 1A and 1B). Crespo testified that [REDACTED]'s stepson and business partner, [REDACTED] not [REDACTED] said something to that effect as part of a controlled phone call to [REDACTED] a salesman at Richmond, and in another controlled telephone call to [REDACTED] the collections manager at Richmond. Both of these conversations occurred at a later date and the statements were made as part of effort to draw out information from

[REDACTED] d [REDACTED]

Crespo testified that neither [REDACTED] nor [REDACTED] was willing to promise that the Respondent would not be sent back to [REDACTED]'s store. How this corroborates the allegation that the Respondent intimidated [REDACTED] on June 11, 2007 was never made clear. Without hearing from [REDACTED] or [REDACTED] that Richmond was using the Respondent as some kind of strong arm man or that they were intimidated by him (there is no such testimony), these controlled conversations are meaningless to this case. Richmond may have had other legitimate business reasons for refusing to promise that the Respondent would not be sent to that store. The tapes (if they exist) of the controlled conversations were not put in evidence and neither [REDACTED] nor [REDACTED] testified at this trial.

A review of the evidence actually presented at trial demonstrates that it is insufficient to establish that this Respondent intimidated Ali and the Respondent is found Not Guilty of this specification.

#### B. Employment of a Relative

Specification No. 4 charges that the Respondent engaged in conduct "prejudicial to the good order efficiency or discipline of the Department" in that he "had knowledge that a relative was employed at an establishment located within the parameters of his enforcement duties and said Sergeant did not inform any Department officials."

The facts to support this allegation are not seriously in dispute in that the Respondent's sister Dawn was employed part time at [REDACTED] premises that was subject to enforcement by his unit and the Respondent acknowledges that he became

aware of this. Counsel for the Respondent points out that there is no specific procedure in the Patrol Guide which would require the Respondent to inform anyone about that fact.

As noted earlier the Patrol Guide is a guide. The Foreword to the Patrol Guide, § 200-01, provides: "Members are also required to conform their conduct with their oath of office, and to the mission, values, strategies, objectives, policies, procedures and legal requirements of the Police Department. All members of the Department will be accountable for their actions and should maintain the highest professional Standards."

Any reasonable person and certainly any member of the service particularly one serving in the rank of sergeant, should be aware that the fact that his sister worked a bar where he had enforcement responsibilities created a very strong appearance of impropriety regardless of the state of his relationship with his sister. He needed to take some action so that the Department could determine how best to address this problem.

The Respondent points out that his sister was not under his control and that the Respondent could not keep her from taking the job, or having taken it, make her leave it.

This is certainly true but that does not vitiate the problem. The Department might have decided that he should no longer conduct enforcement at that premises or the Department could have determined that his ability to conduct enforcement duties would not be impaired. That decision could only be made by someone in a position of higher responsibility within the Department, certainly someone of higher rank than sergeant. It was a decision that, pointedly, could not be made by the Respondent.

The duty to address this issue need not be specified in the Patrol Guide because it is obvious. Because the Department is an organization that has a paramilitary structure the first step would have been to notify his superior. The Respondent failed to do this

and is therefore found Guilty of this specification.

#### C. Off-Duty Employment Activity

Specification Nos. 1, 2 and 3 are very similar. In addition to issues of fact they present issues of interpretation as to exactly what conduct they are intended to address.

The first two specifications state in pertinent part that the Respondent "wrongfully employed individuals for the purpose of engaging in business dealings on his behalf with establishments located within the confines of his precinct of assignment." Specification No. 3 omits the phrase about "precinct of assignment" and substitutes it with the phrase "participated in illegal gambling operations."

Specification Nos. 1 and 2 differ in that Specification No. 1 charges a violation of Conflict of Interest Rules of the NYC Charter while Specifications No. 2 charges "conduct prejudicial to the good order, efficiency or discipline of the Department" in violation of the Patrol Guide, as does Specification No. 3.

During the trial there was much testimony about the fact that the Respondent engaged in off-duty employment in his precinct of assignment. Crespo testified that [REDACTED] told him that the Respondent had done pest extermination work at [REDACTED] Bagel. He also was involved in work for Richmond there. There was also testimony that the Respondent did pest extermination work at the apartment building owned by [REDACTED]. None of this was denied by the Respondent; indeed, in his testimony the Respondent admitted to having numerous pest extermination clients in the 120 Precinct and servicing a number of businesses for Richmond there. The only thing he has denied was doing work in bars, not just [REDACTED] and [REDACTED] but all bars.

At the conclusion of all the testimony, the Court asked the Advocate why there was no charge for this admitted misconduct. The response was that the Department felt it was covered under Specification Nos. 1 & 2, citing the phrase within the "confines of the precinct of assignment" in those specifications.

This caused additional confusion because these three specifications appear to relate to [REDACTED] and [REDACTED]. In her written closing argument the Advocate appears to agree that these specifications refer to those two bars and explains that at the hastily arranged Official Department Interview in March 2008 the Department did not learn of the extent of the Respondent's work in the precinct and indeed first learned about it during his testimony at trial. The Advocate then asks the Court to "conform the pleadings to the proof" and amend the charges to "include Respondent's personal involvement in improper business practices within the 120 Precinct."

It would appear that by "improper business practices" the Department is referring to the fact that the Respondent dealt with business accounts for both of his off-duty employment ventures within the 120 Precinct.

#### Work within Precinct of Assignment

Section 205-40 of the Patrol Guide deals with Off-Duty Employment. Under the title General Prohibitions within that section, Item 12 prohibits off-duty employment when it involves employment by a uniformed member of the service in the precinct to which he or she is assigned. Item 12 goes on to note that a member assigned to a command whose jurisdiction encompasses more than one precinct may be permitted to engage in off-duty employment within the area to which he or she is assigned unless the circumstances would create a conflict of interest or a corruption hazard.

Obviously there is a potential that an officer may have a conflict of interest while doing business within his or her precinct of assignment and that is the issue that Item 12 is designed to address. However the drafters of Item 12 had to address the issue of officers whose assignment covered more than one precinct. If off-duty employment within the geographic area of the work assignment constituted an automatic conflict of interest the only solution would have been to prohibit off-duty employment to those officers within that geographic area, whether it encompassed several precincts, a patrol borough or the entire city. The drafters did not do so and narrowed the prohibition to one based on the actual circumstances of the employment and police job responsibilities.

The drafters of this portion of the Patrol Guide therefore have answered the question of whether working off-duty employment within the precinct of assignment is in and of itself a conflict of interest in the negative.

The work which the Respondent did at [REDACTED] Bagel and the work which he did at Raddicone's apartment building appear to have violated Patrol Guide § 205-40.<sup>9</sup> These facts were certainly known to the Department at the time the charges were drawn in March 2008 and when the charges were amended in May 2008 and when the case was put on the calendar for trial in August 2008. At the trial when the Respondent testified in January 2009 the Advocate posed many questions regarding specific additional businesses that the Respondent serviced inside the precinct.

The Department has not provided the language with which it is asking the Court to "conform" the charges. What the Department is asking the Court to do is to fashion those charges. Such charges would involve a violation of Patrol Guide § 205-40 which has not been presented by the Department. Additionally those charges would involve

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<sup>9</sup> It would appear that Crespo did not think this conduct violated the Patrol Guide, (T 771).

conduct that is not encompassed in any way within the current charges.

This Court does not believe that this can properly be done post trial.

a) Specification No. 1

This Specification charges that the Respondent “wrongfully employed individuals for the purpose of engaging in business dealings on his behalf with establishments located within his precinct of assignment, in conflict with the proper discharge of his official duties” thereby creating a conflict of interest.

Before addressing the difficult and highly contested factual issues behind this allegation it might be useful to examine the application of the statute under which Specification No. 1 is charged: City Charter § 2604 (b)(2). That section provides: “No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.”

Section 2604 does not stand alone. It is part of Chapter 68 which among other things establishes the Conflicts of Interest Board (COIB). Also contained within Article 68 is § 2606 (d) which limits the application of 2604 (b) (2) to “violations involved in conduct identified by rule of the board.”

COIB has issued Rules of the Board, within which there is a section, 1-13, entitled: Conduct Prohibited by City Charter § 2604 (b)(2). While the Board expressly reserved the right to expand the scope of the rule in the future they limit it at present to issues involving the performance of private activities on City time and the use of City letterhead, personnel, equipment, resources and supplies for non-City business.

None of these, by any reading of the charge, are involved in the case currently before this Court. Consequently the City Charter is misapplied in this case and Specification No.1 must be dismissed.

b) Specification No. 2

As noted, Specification No. 2 has virtually the same language as Specification No.1 but charges "conduct prejudicial" under the Patrol Guide.

While the Department cannot charge the Respondent with conflict of interest under the City Charter it has a right to hold the Respondent to standards of conduct under the concept of "conduct prejudicial." Indeed the Respondent himself repeatedly acknowledged that it would be a conflict for him to do exterminating work in the bars owned by Shaffer and an impropriety or appearance of impropriety are certainly covered under Patrol Guide § 205-30.

The Department asserts that the Respondent did employ people, in particular Pepitone, to do pest extermination work in the bars owned by Shaffer.

The evidence clearly points to the fact that Pepitone did exterminating work in [REDACTED] and [REDACTED]. It is unquestioned that Pepitone did work for the Respondent as an exterminator for his business All Platinum. The Respondent testified that he only had one to three employees and even referred to Pepitone as his "one good guy" mirroring what others said about the Respondent describing Pepitone as his best guy.

The Respondent asserts that Pepitone worked sometimes for the Respondent, sometimes for himself, and sometimes for other exterminating companies. This, the Respondent tells us, involved Pepitone changing his shirt and either taking off or putting

on an All Platinum shirt which corroborates Santangelo's testimony that he had seen Pepitone wearing an All Platinum shirt.

Looking at the totality of this situation it takes on the appearance of a charade in which the only claimed outward manifestation of who Pepitone is in a given instance was the shirt he was wearing. This is not credible. Moreover the Respondent admitted going into bars while engaging in police enforcement activity wearing his All Platinum jacket. If the shirts were so important and the Respondent was sensitive to this importance why would he do that?

The answer is simple: while the Respondent claimed the lines between his personal and police activities were sharply drawn, the lines between these activities were in fact blurred. For instance the Respondent denied that he did work in the bars but stated that when the bouncer of [REDACTED] told him that Shaffer was looking for an exterminator the Respondent stated: "and I told him that since the contract was open, I would ask out to a couple of people, you know, a couple of exterminators that I know...a few people that I work with. One would be Eddie Pepitone, who freelances and his own side business (T 1045). Another guy who owns Safeguard Homes...and another exterminator his name is Tommy. He also freelances for Safeguard Homes" (T 1044 – 1045). Pepitone in his affidavit indicates that he works as a freelance exterminator but also for "Safeguard Homes, Fred Swetzky and All Platinum Pest Control." Additionally Shaffer, the Respondent's witness, testified that the Respondent referred Pepitone.

In short what seems to exist is at least a de facto consortium or combination in which the Respondent can avoid working directly in bars by giving the work to, as the Respondent himself put it, "a few exterminators that I work with." The fact that Pepitone

wore several hats, or more correctly several shirts, is nothing more than a "fig leaf."

This can best be seen in the situation regarding the premises [REDACTED]

which encompasses an apartment dwelling and the bar [REDACTED]. While there is some question of the exact set-up of the building, testimony describing the bar has it to the side of the apartments, it is nonetheless the same address.<sup>10</sup> At this one address, according to the Respondent, Pepitone did pest extermination work in the apartment building for All Platinum and Pepitone did pest extermination work at the bar as an independent contractor.

There is also testimony from Santangelo, who was the Respondent's driver, which is very credible on this issue. He recalled that the Respondent "on occasion...did do a couple of jobs" for [REDACTED] or [REDACTED] and that the Respondent also performed services for another bar, the Blue Lounge, on one occasion. Santangelo testified that the Respondent "would have one of his men" perform the work at the [REDACTED] and [REDACTED] and indeed he recalled that on occasion Shaffer directly asked the Respondent about pest extermination work and that the Respondent said he would have someone else perform the service. Further Santagelo knew that Pepitone was the Respondent's "main person" and that he had seen Pepitone wearing an All Platinum shirt.

On cross-examination Santangelo conceded that he would not know if the person the Respondent was sending over was an outside contractor or a direct employee, he insisted that the Respondent told Shaffer that he would "have one of his people come over or somebody come over to do the job."

No books and records were sought, let alone produced, at trial and there is no

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<sup>10</sup> There is no testimony in the record to support the Department's assertion that the bar was "contained" in the building (see Department's Closing p. 25; T 426-427).

evidence that monies paid for extermination services at [REDACTED] and [REDACTED] passed to All Platinum or the Respondent. However it is hardly uncommon for courts to look beyond the technicalities and recognize the reality of a situation (note, for example, the equitable concept of "piercing the corporate veil"). There is ample evidence that the Respondent had been actively engaged in directing who got the contract at these bars and who did the work. Further he acted as de facto employer when he specifically agreed to see that someone would be present to provide service.

This conduct constitutes a conflict of interest as well as the appearance of a conflict interest that the Department has a right, indeed an obligation, to address.

The Respondent is found Guilty of this specification.

### c) Specification No. 3

The third specification in this series is similar to Specification Nos. 1 and 2 but has the added aggravating fact that the subject premises was involved in gambling. For this specification to have any meaning at all the Respondent would have had to have known that illegal gambling was going on at these bars. The Advocate did not indicate in her opening statement how she was going to prove this. There was no evidence of this on the Department's case and the Department seemed to rely on its belief that the Respondent was somehow in cahoots with Shaffer.<sup>11</sup> There was simply no evidence presented by the Department that the Respondent knew that illegal gambling was going on.

Interestingly enough the Respondent offered some evidence to that effect which

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<sup>11</sup> In her closing argument the Assistant Department Advocate ties this specification in with Specification No. 5 which charges the Respondent with divulging the existence of an undercover in the bar. As will be seen in the discussion of that specification, a connection between the Respondent and Shaffer has not been established.

needs to be analyzed. The video offered by Shaffer shows that there were electronic poker machines in [REDACTED] But there was no evidence that these are *per se* gambling devices and indeed UC 5601 testified that he had to use them to make sure there was a pay-off before alerting the backup team. This would tend to indicate that one could not tell just by looking at them that these machines were illegal. So even if the Respondent was not being candid when he testified that he did not pay much attention to those machines and thought they were video games, there is no evidence that seeing them would have given him knowledge that they were illegal.

There is also testimony from the Respondent that [REDACTED] came to him with some kind of a complaint. While the exact nature of that complaint is not known, the Respondent gave unchallenged testimony that he referred [REDACTED] to Vice. While this hints that the Respondent might have known about gambling in the bar it still is not evidence of it. If [REDACTED] did discuss illegal gambling at the bar with him, referring [REDACTED] to Vice would have been very appropriate.

In point of fact, besides the Joker Poker machines, the only evidence presented to this Court that illegal gambling went on in the bars was the fact that the undercover using the name "Pete" placed two bets with Shaffer. But, as will be seen, there is no evidence that the Respondent knew about those bets.

Moreover, it is also not clear exactly what the gravamen of this specification is. Even if the Respondent sent someone into these locations on occasion to conduct pest extermination that is hardly conduct that is part and parcel of operating those bars or furthering any illegal gambling activities.

More confusing is the fact that the Respondent was regularly in these locations as

part of his enforcement work. If he knew about illegal gambling and failed to take appropriate police action that might be a reasonable charge. There is no such charge in this case and if anything he appears to have initiated the gambling investigation by sending [REDACTED] to Vice.<sup>12</sup>

The Respondent is found Not Guilty of this specification.

#### D. Divulging the Existence of an Undercover Operation

Specification No. 5 is the most serious single specification in this case. It alleges that on December 11, 2007 the Respondent “wrongfully and without authorization divulged and discussed official Department business, to wit: said Sergeant divulged to an individual known to the Department that there was an undercover police operation being conducted at a location which was, in fact, under investigation for illegal gambling activity.”

The background of this charge relates to the actions of Vice with regard to Shaffer and his bars. On November 14, 2007 Vice conducted a raid on Beer Goggles centered on several electronic poker machines. UC 5601 had been in the bar as part of the operation before the raid. On the bar’s security video UC 5601 can be seen leaving the bar as the police begin their operation. Shaffer was not present at that time but his girlfriend was arrested in connection with the raid.

Subsequently [REDACTED] and UC 5601 met and developed a cover story in which [REDACTED] would introduce UC 5601 to Shaffer as “Pete,” a fellow who wanted to engage in gambling and other illegal activity. On December 8, 2007 the two of them went to [REDACTED]. Shaffer was not there. They spoke to a bartender, [REDACTED] about

<sup>12</sup> The Respondent testified he gave the telephone number for Vice to [REDACTED]. Charlson testified that [REDACTED] became an informant after he called Vice. There is no other testimony on this issue.

illegal cigarettes and gambling. Then they called Shaffer. A \$200 sports bet was made on the telephone with the understanding that "Pete" would return to either pay up or collect.

On December 11, 2008 Shaffer called UC 5601 using a cell phone number "Pete" gave him. They arranged to meet at 8:00 at [REDACTED]. They met that evening for the first time. "Pete" handed Shaffer \$200. "Pete" also made a bet in the amount of \$550 on a sporting event. Shaffer allowed "Pete" to place the bet on his account with an off-shore gambling site. No money was exchanged. They also discussed how Shaffer could get "Pete" involved in a Texas Hold 'Em poker game on Staten Island.

On December 12, 2007 Shaffer called "Pete" and cancelled the bet and any further contact. It is alleged that Shaffer did this because he knew "Pete" was an undercover police officer and that the Respondent informed him of that fact.

The evidence put forward by the Department to support this contention is scattered within the testimony of Crespo and Carione and found in the testimony of UC 5601, Sheehan and Charlson. Some of the evidence is hearsay; some is inferential. There is no direct evidence regarding this specification.

There was also testimony about telephone calls involving the Respondent and Shaffer (see Penlink<sup>13</sup> records: DX 3, 4 and 5) which, after an examination of the original telephone records (RX A, B and C), the Department conceded did not exist (see DX 3A, 4A and 5A). Indeed it was stipulated that there was no evidence of telephone contact between the Respondent and Shaffer from December 2007 to March 2008 (CX 1).

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<sup>13</sup> Penlink records were Department generated spreadsheets prepared from the telephone records.

### 1. The Respondent's Theory

The Respondent has no burden of proof but he has put forward a theory of how Shaffer learned of the existence of an undercover operation. Perhaps the best way to examine the complicated and vigorously disputed facts regarding this specification is to begin with the defense.

The Respondent denies divulging an undercover investigation and contends that there were other ways that Shaffer could have known that an undercover had placed a bet with him. The defense contends that after the second bet was placed on December 11, 2007, Shaffer became nervous and he drove to Manhattan to meet with a retired police officer who works for him as a bouncer. That officer, [REDACTED] explained how an undercover operation would work and advised Shaffer of the practice of using a "ghost."

[REDACTED] was interviewed by Crespo and made a statement to the effect that such a conversation occurred. Shaffer, when he appeared at this trial, also testified that such a conversation occurred.

At trial Shaffer also provided a DVD of the raid at [REDACTED] on November 14, 2007, taken by a security camera in the bar (RX D).<sup>14</sup> On that video Undercover 5601 can be seen. Shaffer said he viewed that video after speaking with [REDACTED]. He said his girlfriend, who was arrested as part of the November 14, 2007 raid and who was present when he met with "Pete" at [REDACTED] on December 11, 2007, also recognized Charlson as the "ghost." Charlson can be seen on the video as part of the Vice operation.

It was at that point, the Respondent contends, sometime in the early morning hours of December 12, 2007, that Shaffer realized that "Pete" was an undercover police

<sup>14</sup> Counsel for the Respondent indicated that he first learned of the video in December 2008, in the midst of the trial, and that he turned it over to the Department after receiving it.

officer.

The Department has argued that the undercover was posing as a customer on November 14, 2007 and because he left [REDACTED] shortly after the raid began Shaffer could not have known that he was a police officer.

I disagree. Even if the undercover was posing as a customer, his presence at [REDACTED] when the raid occurred would have certainly caused Shaffer to at least strongly suspect that the undercover was connected with the police activity going on in the bar.

Shaffer testified that he did not really notice the undercover in the video until he viewed it after the December 11, 2007 encounter where he met "Pete" for the first time. He said his earlier repeat viewings of the video were focused on two other segments: one in which his pregnant girlfriend was handcuffed and another in which he claimed he saw police officers pocket money seized from the bar during the raid. One of the officers involved in that alleged conduct was Charlson.

It is undisputed that Charlson can be seen on the video for an extensive period of time and was an active part of the police raiding team. Shaffer testified that the "ghost" could be seen on the video and the Court, and possibly everyone else in the proceeding, learned at the very end of the trial, during the rebuttal testimony of UC 5601, that Charlson had been the "ghost" that day in [REDACTED] and also served as a "ghost" when the undercover placed the bet with Shaffer in [REDACTED] on December 11, 2007. So Shaffer's statement that his girlfriend saw the "ghost" on the video was credible. This would have served as another means of determining that "Pete" was an undercover police officer.

Then there is the testimony by UC 5601 that on December 12, 2007 he spoke to

[REDACTED] and learned that he had been seen on a security video. There is, therefore, testimony from a Department witness that the video was an issue on December 12, 2007.

## 2. The Department's Theory

The Department contends that the Respondent "divulged" the existence of the undercover operation to Shaffer on the morning of December 11, 2007. The Department's theory of how Shaffer learned of the undercover operation is not set forth in a clear, succinct, chronological fashion in its opening statement or closing argument so the Court will attempt to do so here.

The Respondent, it is claimed, learned that Vice was conducting an operation at Shaffer's bars because he was told of it by Sheehan. The Respondent was told to cease enforcement at those bars so he would not interfere with that Vice operation.

The Department's case also relies on the fact that there was telephone activity between [REDACTED] and the Respondent and between [REDACTED] and Shaffer in the period of December 8, 2007 to December 12, 2007. In particular a telephone conversation between [REDACTED] and the Respondent on December 11, 2007, the Department claims, evinces the fact that the Respondent "divulged" the undercover operation.

On December 12, 2007, Charlson learned from [REDACTED] that the undercover operation was compromised by the Respondent. He called the Internal Affairs Bureau, which launched its investigation. He also called off the Vice operation.

It is now necessary to look at the Department's proof on this issue. Charlson testified that he had a conversation with [REDACTED] who told him that the Respondent informed Shaffer about the undercover operation. Of course this is hearsay, indeed possible double hearsay, and to accept this testimony as evidence that the Respondent

divulged the existence of the undercover operation one would have to find that Charlson accurately conveyed what [REDACTED] said and that [REDACTED] was both truthful and accurate.

Counsel for the Respondent has argued that Charlson, to divert attention away from the video, which he claims shows Charlson pocketing money seized during the raid, inserted the Respondent as the source of the leak.

This alleged effort to divert attention seems unlikely for several reasons. The first is that there is no evidence that Charlson knew the Respondent personally or even knew of him before that conversation with [REDACTED] on December 12, 2007. Moreover, if Charlson were trying to draw attention away from the video he probably would have avoided involving IAB which he had to know would set off a deeper investigation. There is therefore little reason to believe that Charlson would have done anything to falsely inculpate the Respondent at that time.

[REDACTED] is a different matter. He was an informant and while some informants are civic minded citizens whose only goal is to help law enforcement some have an array of personal motives for providing information which sometimes is false. There are also questions about [REDACTED]'s credibility. For instance both Crespo and Carione agreed that during his first interview [REDACTED] said that the Respondent was collecting protection money from Shaffer but he later retracted that claim. This is significant as this corruption charge is at the heart of the case. As Carione put it, the premise of the case was that the Respondent and Shaffer had an improper relationship. If [REDACTED] made such an allegation and then retracted it there may be some concern about his believability and reliability of his claims.

a)

[REDACTED] did not testify at this trial and was not subject to cross-examination.

The best we can do is attempt to reconstruct what actually was said and the basis for saying it.

We know that on December 12, 2007 Shaffer made a call to UC 5601 to cancel all activity. UC 5601 then called [REDACTED] who told him that Shaffer knew he was undercover and that he was seen in a surveillance video. Charlson also reached out to [REDACTED] and was told that the Respondent was the source of the leak. However it is worth looking at exactly what Charlson said in his testimony:

The information I related to IAB was the information I received from [REDACTED] in which he stated to me that Chris Shaffer knows that the undercover is a detective. And I asked [REDACTED] well, how do you know this? He informed me that a sergeant from the 120 Precinct stated—his name was Bill Lewis—informed Chris Shaffer that there's undercovers performing operations in the locations that we were conducting our operations. I had to make that notification because I didn't know where he got the information from. (T 571)

What is important to note in this is that when Charlson asked [REDACTED] the source of his information he only got a partial answer. That is, based on the above, he never found out how [REDACTED] knew that the Respondent informed Shaffer. We don't know if Shaffer told him that or if it is a deduction that [REDACTED] made and Charlson accepted without question.

Charlson referred the matter to IAB and subsequently Crespo and Carione interviewed him. Here is what the Advocate stated about what she learned:

On the morning of December 11, 2007, Mr. [REDACTED] explained that he received a phone call from Respondent, informing him that Vice was conducting undercover operations at the bars and was seeking to arrest Mr. Shaffer. Mr. [REDACTED] claimed that it was *his belief* (emphasis added) that Respondent divulged to Mr. Shaffer the

existence of an undercover operation as well. Later that day Mr. Shaffer also called Mr. ██████████. During this conversation, Mr. Shaffer accused Mr. ██████████ of bringing an undercover into the establishment on December 8, 2007, the date that Mr. Shaffer first spoke to Undercover 5601. (Department Closing 5)

Thus it becomes clear that the Department's position is that ██████████ "believed" that the Respondent told Shaffer. What we have is hearsay about someone else's opinion. Opinion testimony of this type is not ordinarily permissible. If ██████████ had appeared and testified in this matter he would have had set forth facts which led to that belief.

Moreover ██████████ recanted his claim that Shaffer informed him that he learned of the undercover from the Respondent (T 287) which raises questions about ██████████ general credibility and about his credibility on this issue in particular.

Thus, the first problem with the Department's case is that it is dependent on hearsay testimony about ██████████'s "belief" without explanation of the basis for that belief. The second problem is ██████████'s credibility.

b) Basis of ██████████'s Belief

Because ██████████ did not testify we have to examine available information to determine how he might have formed this conclusion. The Respondent called ██████████ on the morning of December 11, 2007 and it is alleged that he told him that there was an undercover operation at the bars and that the police were seeking to arrest Shaffer. How this leads to the conclusion that the Respondent also spoke with Shaffer and divulged the same information is not explained nor does it makes sense on its face.

The Respondent testified that he referred ██████████ to Vice and this claim is not challenged in the record. If the Respondent told ██████████ about an undercover operation, as the Department claims, it seems that he would have been telling ██████████

that Vice was doing what [REDACTED] wanted them to do. No logical connection or linkage between that alleged act and the act of informing Shaffer about the undercover operation has been offered.

At this juncture the problems with accepting this hearsay become very apparent as only [REDACTED] could explain that, if indeed it can be explained. Apparently he was not asked to explain it by Crespo or Carione or one would expect that that explanation would have been part of the evidence in this case. It is not.

It is worth noting that if the Respondent spoke to [REDACTED] and told him about the existence of an undercover operation, even one in which [REDACTED] was personally involved, that might have been a violation of the Patrol Guide.<sup>15</sup> We don't have to concern ourselves with that as the Respondent is not charged with that act and in any event the Respondent denied divulging the undercover investigation to [REDACTED].

Thus another major problem with the Department's scenario is that there is no evidence or logical theory from which one can deduce how [REDACTED] came to the conclusion, or indeed how this Court could come to the conclusion, that the Respondent disclosed the undercover investigation to Shaffer based on the call to [REDACTED].

### c) Telephone Records I

At the outset of this case the Department had an answer to the problem outlined above. It had proof, it believed, that the Respondent directly communicated with Shaffer via the telephone.

The first testimony about the call on the morning of December 11, 2007 occurred near the beginning of the trial. Crespo indicated that this, in fact, was a three-way call

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<sup>15</sup>PG 203-10 paragraph 3 prohibits "Divulging or discussing official Department business, except as authorized."

involving the Respondent calling [REDACTED] and Shaffer. Indeed at the beginning of the trial both Crespo and Carione indicated that there were a number of calls between Shaffer and the Respondent and that there were indeed a number of three-way calls involving Shaffer [REDACTED] and the Respondent.

This was at best circumstantial evidence and it was never made clear why any of these parties would engage in three-way calls for any purpose let alone disclosing an undercover investigation. Crespo did seem to offer a theory that the Respondent called Raddicone and at the same time surreptitiously called Shaffer but it was never explained how or why this was done. Indeed he said he determined that the three-way call theory was merely a possibility (T 167) but nonetheless based conclusions on it.

More significantly conclusions based on this theory are at odds with the notion that [REDACTED] determined that the Respondent told Shaffer about the undercover because [REDACTED] did not know about any three-way calls.

In any event, any theory the Department may have had about three-way calls completely fell apart when the Department reviewed the phone records and conceded mid-trial that "no phone activity occurred between Sergeant Lewis and Chris Shaffer from December 2007 through March 2008."

The impact of this on the Department's case was profound. Crespo testified on the first day of the trial that the phone conversations between Shaffer and the Respondent led him to substantiate the charges. When Crespo was asked if his opinion would change if he learned that there was no phone contact between the Respondent and Shaffer Crespo insisted that there was phone contact. But he went on to agree that if there was no phone contact he would not maintain that position (T 272-273).

Crespo started his testimony on November 14, 2008. His testimony was interrupted and he returned to the witness stand on December 11, 2008. Despite the Court's instruction not to discuss the case during the hiatus he worked on preparing the corrected phone records. During his testimony of December 11, 2008 no new theory was offered explaining any further relevance of the telephone records.

It was therefore quite surprising to see the Department claim in its closing argument that "Phone activity shows calls made between the Respondent and Mr. [REDACTED] and Mr. [REDACTED] and Mr. Shaffer at critical times when undercover [REDACTED] activities took place in the bars." This general reference to phone calls fails to pinpoint what calls the Department is relying on or how they show that the Respondent communicated something to Shaffer. Moreover all of the testimony at trial regarding telephone calls was based on the original, discredited, Penlink records.

As no explanation has been offered as to how calls between [REDACTED] and Shaffer or [REDACTED] and the Respondent provide evidence that the Respondent gave information to Shaffer, consideration must be given to the possibility that the Department is still relying on the alleged three-way calls which involve direct contact between the Respondent and Shaffer. Indeed, the general references to Crespo's investigation and the broad references to telephone records in the Department's closing, which sets forth the Department's theory of the case, incorporate, perhaps unwittingly, this non-existent evidence.

To understand how the discredited phone records and the method of analysis that led them to continue to affect the Department's understanding of this case, it is necessary to look at that evidence. The Court prepared a list of calls using the original Penlink

records (DX 3, 4 and 5). Those calls, in the period of December 8 through December 12, 2007 are:

- December 8, 2007 8:55 am Shaffer to Respondent 1 minute
- December 8, 2007 8:58 am Respondent to Shaffer 3 minutes
- December 11, 2007 11:44 am Respondent to Shaffer 6 minutes
- December 12, 2007 7:29 am Shaffer to Respondent 2 minutes
- December 12, 2007 1:37 pm Respondent to Shaffer 10 minutes

All of these show up in the original Penlink records as three-way calls as they appear simultaneously with calls on Shaffer's phone records (DX 4) and [REDACTED]'s phone records (DX 3). The existence of three-way calls was a conclusion reached by Crespo and Carione. No technical expert from the telephone company testified to support that assertion and we now know that there were no such calls and that none of the above calls ever occurred.

There were some indications during the investigation that might have led to the discovery that the Penlink records were incorrect before the trial. For instance Crespo testified that their confidential informant, [REDACTED] said he was unaware of any three-way calls. Then there was the fact that these calls appeared on Shaffer's Penlink records but not on the Respondent's. Also there was the fact that a controlled phone call in March 2008 came up on the Penlink as a three-way call. Further, several of the alleged three-way calls involved simultaneous calls from [REDACTED] and Shaffer to the [REDACTED] Respondent. But overriding all of this was the fact that no logical explanation was ever offered as to why the Respondent would have used three-way calls to give up the informant.

The Court will return to the issue of the phone calls later in this decision.

d) Events of December 11, and 12, 2007

The reasonableness of the two competing theories of what happened might well be evaluated by reviewing the events of these two days. In her closing argument the Advocate states: "Detective Crespo testified that, based on his investigation, the leak of information took place in the *morning* of December 11, 2007, prior to the in person meeting between Undercover 5601 and Mr. Shaffer."

UC 6501 testified that he received a call from Shaffer on December 11, 2007 on his undercover cell phone. Unfortunately the testimony does not establish when exactly that call was made. We do know that as a result of that call they arranged to meet at [REDACTED] at 8:00 p.m. on December 11, 2007 so that "Pete" could pay Shaffer the \$200 he lost on the bet he had made on December 8, 2007.

The Department asserts that Shaffer was nervous when he received the payment but nevertheless Shaffer accepted a second bet in the amount of \$550. This was accomplished by allowing the undercover to go on-line and make a bet using Shaffer's off-shore gambling account. After that was done he told the undercover: "...pay me if you lose. If you win, come back, I will give you your money." They also discussed how Shaffer could set him up with a poker game on Staten Island.

On the next day, December 12, 2007, Shaffer called the undercover and told him he wanted nothing more to do with him.

Thus under the Department's theory Shaffer knew "Pete" was an undercover and

engaged in the above illegal conduct notwithstanding that knowledge.<sup>16</sup> Under the Respondent's theory Shaffer learned of the fact that "Pete" was an undercover after he took the second bet. He cut off all contact after he confirmed, through [REDACTED] and the video, who "Pete" was.

The Department argues that Shaffer was nervous when he received the payment from "Pete" on December and that this is evidence that Shaffer knew that "Pete" was an undercover police officer. The Respondent argues that Shaffer became nervous and suspicious when "Pete" asked a lot of questions about the availability of illegal activity and when his background story did not match with what [REDACTED] told him about "Pete's" background.

Shaffer also testified that one of the reasons he suspected that "Pete" was a police officer was that as he left the bar on December 11, 2007 "Pete" made a hand signal. UC 5601 testified on rebuttal that he would not have made any kind of signal because he was not calling for back-up. This seems credible. But given the state of Shaffer's anxiety, UC 5601 testified Shaffer followed him out of the bar and into the street; Shaffer might well have seen an otherwise innocent gesture as a signal.

It seems illogical that Shaffer would take payment on the first bet and accept a second bet from a known undercover on December 11<sup>th</sup> and for no apparent intervening reason cease doing business with him on December 12<sup>th</sup> as the Department suggests. While it is possible that Shaffer was nervous, his anxiety is as easily explained in the Respondent's version as it is in the Department's.

An objective look at these facts seems to strongly suggest that Shaffer learned that

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<sup>16</sup> Indeed, depending on the time of the phone call, Shaffer even called "Pete" to come and pay the bet after he knew that he was an undercover.

"Pete" was an undercover officer on December 12, 2007, which incidentally is what Shaffer testified occurred. The illogical sequence of events posited by the Department is yet another problem with the Department's theory of when and how the undercover operation was disclosed to Shaffer.

e) Alleged Source of Respondent's Knowledge of Vice Operation

Another part of the theory put forth by the Department is that the Respondent knew about the undercover investigation being conducted by Vice because he was told of its existence by his superior officer, Sheehan. Sheehan did testify that he told the Respondent that Vice had an operation in the area and that he was to stay away from certain bars including [REDACTED] and [REDACTED]. Sheehan could not give a specific date. The Respondent claimed that Sheehan never told him specifically that there was a Vice operation going on but he did indicate that periodically his Conditions Unit was told to stay away from certain areas.

Whether he was told the specific reason or not, the Respondent might have conjectured that some kind of undercover operation was going on and if he was of a mind to warn Shaffer that would have been enough information to trigger a "heads up."

The problem with this theory lies in the timeline. We don't know the date of the alleged order to stay away. Crespo testified that the Vice investigation into [REDACTED] commenced in August of 2007 and was called off on August 21, 2007.<sup>17</sup> He also testified that Raddicone was signed up as an informant for Vice on November 20, 2007 (T 243),<sup>18</sup>

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<sup>17</sup> Crespo originally testified that the Vice operation commenced in August and ended on November 22, 2007. During cross-examination his recollection was refreshed by viewing Vice paperwork and he agreed that he had been mistaken about the closing date of that operation.

<sup>18</sup> At another point in his testimony Crespo stated that as of December 2007 he understood that [REDACTED] had worked for Vice for "approximately over a year" (T 113).

and that Vice re-opened its investigation on November 27, 2007.<sup>19</sup>

There is no allegation that the Respondent compromised the investigation in August. If the Respondent was inclined to give information to Shaffer, or even to [REDACTED] why would he have waited until December 11, 2007 to do so? It would certainly be a remarkable coincidence that the Respondent divulged the information just when Shaffer was going to collect on the bet.

There is another problem with this theory in that the Respondent issued summonses to Shaffer and patrons at the bars on November 28, 2007, December 1, 2007 and December 12, 2007. If the Respondent violated Sheehan's order to stay away from [REDACTED] and [REDACTED] then we would expect to have seen charges for that.

There are none and no one claimed he violated any stay away order. Sheehan certainly would or should have known about the issuance of the summonses, at the time, and should have taken some action then if his directions were being ignored, but he did not nor did he indicate that the Respondent violated any order to stay away. That fact would tend to indicate that no one directed the Respondent to stop enforcement at those bars when the Vice investigation re-commenced on November 27, 2007 and that he would not have known by that means of an undercover operation in December 2007.

Additionally even if he knew about a Vice operation because he was told not to engage in his regular enforcement activities, the information would have been general in nature. He would not have known from this source any specifics of the Vice investigation. He would not have known when or how bets were being made and he would not have known about "Pete."

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<sup>19</sup> There may be some problem with this date as well because we know that Vice conducted a raid on [REDACTED] on November 14, 2007.

These factors comprise additional weaknesses in the Department's theory as the Department offers no clear evidence that the Respondent knew of the Vice operation nor does it even attempt to explain how he might have known any details about that investigation.

f) [REDACTED] I

Former Police Officer [REDACTED] was interviewed by Crespo and gave a statement in which he said that he had told Shaffer about the possibility of an undercover operation in the bar. The Department believes that is a lie and indeed somehow supports the case against the Respondent. In her closing argument the Advocate explained:

Based on his investigation, Detective Crespo concluded that Mr. [REDACTED]'s claim that he was the reason Mr. Shaffer was aware of an undercover operation, was in conflict with other information that he considered and reviewed during his investigation. Specifically, based on interviews with Mr. [REDACTED] members of Vice and his review of phone record activity, Detective Crespo determined that the alleged leak of information had taken place on the morning of December 11, 2007 *before* Mr. Shaffer and the undercover had met for the undercover to make payment. Mr. [REDACTED] essentially claimed that he spoke to Mr. Shaffer about the possible presence of undercovers in the bar *after* the leak was alleged to have occurred. (Department Closing 7)

The problem with this argument is that it is based on Crespo's investigation. This is not evidence and the Department points to nothing specific in the record to stand behind Crespo's "conclusions" and "determinations."

There is, for instance, a blanket reference to information provided by [REDACTED] and "members of Vice." [REDACTED] we know, told Crespo about his "belief" and "members of Vice" could only have provided him with generalized information about the investigation, except that Charlson could have told him about what [REDACTED] said which only brings us back to [REDACTED]'s "belief." The critical piece of Crespo's investigation

was the phone records.

But if Crespo's conclusions have any weight the Department has ignored what Crespo said on cross-examination. He agreed that if there were no phone calls between Shaffer and the Respondent, his conclusion that the Respondent told Shaffer about the existence of the undercover would be wrong.

This is not the only place in the closing argument where the Department relies on Crespo's investigative findings. As those findings were largely based on the discredited phone records the Department is, in effect, continuing to use the non-existent calls to support its case.

g) Telephone Records II

As noted the Department has only broadly referred to the phone calls as supporting its assertions regarding the fact. Using the second set of Penlink records (DX 3A, 4A, & 5A), which are ostensibly accurate, the Court has prepared a chronological list of phone calls involving [REDACTED] and the Respondent as well as [REDACTED] and Shaffer for the period of December 7, 2007 through December 12, 2007.<sup>20</sup>

- 12/07/07 6:09 pm Raddicone → Shaffer 1 min.
- 12/08/07 8:55 am Raddicone → Respondent 1 min.
- 12/08/07 8:58 am Respondent → Raddicone 2 min. 25 sec.
- 12/08/07 9:01 am Raddicone → Shaffer 1 min.
- 12/08/07 11:00 am Shaffer → Raddicone 2 min. 30 sec.
- 12/08/07 2:37 pm Shaffer → Raddicone 4 min. 45 sec.
- 12/08/07 4:04 pm Raddicone → Shaffer 3 min.
- 12/08/07 4:07 pm Shaffer → Raddicone 0 min. 49 sec.
- 12/09/07 1:25 pm Raddicone → Shaffer 2 min.
- 12/10/07 5:22 pm Raddicone → Shaffer 1 min.

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<sup>20</sup> In preparing this chart the Court noted that the supposedly corrected Penlink for [REDACTED], DX 3A, shows an incoming telephone call on 12/9/07 at 1:29 pm from Shaffer. This call does not appear on the corrected Penlink for Shaffer, DX 4A. A check was then done of the actual telephone records, RX 3 and RX 4, where the call does appear. This would indicate that there are still errors in the Penlink records.

- 12/10/07 8:28 pm Raddicone → Shaffer 2 min.
- 12/11/07 11:44 am Respondent → Raddicone 5 min. 14 sec.
- 12/11/07 10:01 pm Shaffer → Raddicone 0 min. 31 sec.
- 12/11/07 10:03 pm Raddicone → Shaffer 4 min.
- 12/12/07 7:29 am Raddicone → Respondent 2 min.
- 12/12/07 7:58 am Raddicone → Shaffer 10 min.
- 12/12/07 1:22 pm Shaffer → Raddicone 2 min.
- 12/12/07 1:37 pm Respondent → Raddicone 9 min. 20 sec.

The Department argues that the telephone records provide evidence that the Respondent revealed the existence of the undercover operation to Shaffer. It asserts that somehow this flowed from information the Respondent provided to [REDACTED] on the morning of December 11, 2007. There was a phone call from the Respondent to [REDACTED] that day at 11:44 am, which lasted for 5 minutes and 14 seconds. It should be borne in mind that this was one of the alleged three-way calls and Crespo specifically testified that information was passed to Shaffer in this call. We now know that this was merely a two-way call between the Respondent and [REDACTED].

It is possible that the Respondent told [REDACTED] about the undercover operation in that call which would be consistent with what [REDACTED] told Crespo. It is also possible he did not, which would be consistent with the Respondent's testimony. Or it is possible that [REDACTED], who knew the details of the investigation, told the Respondent about it. We have no independent indication of what was said in that call and if the investigation was discussed there is still no explanation for, or a theory of how, that information was communicated to Shaffer.

The Department asserted that there was some significance in the phone activity of the Respondent on the day of the first bet, December 8, 2007 (Department Closing 7). There was a call from [REDACTED] to the Respondent at 8:55 am which lasted only one minute and another call from the Respondent to [REDACTED] at 8:58 am which lasted 2

minutes and 25 seconds. It is possible that [REDACTED] left a message in the first call and the Respondent called him back. But whether these are two separate calls or a message and a call back there is no explanation of how one could conclude that these calls had anything to do with the disclosure to Shaffer of the undercover operation particularly since it appears that communication was initiated by [REDACTED]. The only possible way these calls have any relevance was if Shaffer was somehow a party to these calls, which was originally what the Department believed.<sup>21</sup>

There was phone activity on December 8, 2007 between [REDACTED] and Shaffer, which is consistent with [REDACTED]'s efforts to introduce "Pete" to [REDACTED]. These phone calls do not support either side in particular but do confirm the activity that is not in dispute.

Shaffer testified that on December 11, 2007 after "Pete" left the bar he called [REDACTED].

The telephone records reflect that Shaffer called [REDACTED] at 10:01 pm on December 11, 2007. That call lasted 31 seconds; however, [REDACTED] called Shaffer back at 10:03 pm and the conversation lasted 4 minutes. Bearing in mind that "Pete" met [REDACTED] at [REDACTED] at 8:00 pm this would seem to be that phone call.

The Department also offers an explanation for this phone call. The Department claims that Shaffer called [REDACTED] to complain that he brought an undercover into the bar. This is certainly possible but does not explain why Shaffer waited more than ten hours to confront [REDACTED] and indeed until after he took a second bet from the undercover.

Shaffer testified that later he went with his girlfriend to Manhattan where he met

<sup>21</sup> These calls could have provided additional evidence in the investigative stage of this case that there was a problem with the three-way call theory as the 8:55 call had [REDACTED] and Shaffer calling the Respondent at the same time.

with Cucco. Then they watched the video of the November 14, 2007 raid.

The next call in the records is one from [REDACTED] to the Respondent at 7:29 am that lasted 2 minutes followed by one from [REDACTED] to Shaffer at 7:58 am which lasted 10 minutes. The Department, as far this Court can tell, offers no explanation for either of these early morning calls.

The Department asserts with regard to December 12, 2007 that "Mr. [REDACTED] told Detective Crespo that he believed Respondent tried to 'feel him out' for information regarding the events of December 8 and December 11 as they related to Mr. [REDACTED]'s involvement with the undercover operation" (Department Closing 7).

Looking at what Crespo actually said about calls that day indicate that the situation is a bit more complex than portrayed by the Department. Asked what the significance of the call at 1:37 pm was, Crespo indicated that [REDACTED] felt the Respondent was trying to "feel him out" to see if [REDACTED] sent an undercover into the bar on December 8, 2007.

The Court then asked how Crespo, who was looking at Shaffer's phone records, could talk about a call involving [REDACTED]. Crespo went on to explain:

Mr. [REDACTED] basically stated that he received a phone call from Sergeant Lewis the following day after December 11, 2007, and he felt that Sergeant Lewis was attempting to probe for information. I determined it was possibly a three-way call between Mr. Shaffer, Mr. [REDACTED] and Sergeant Lewis without Mr. [REDACTED]'s knowledge. (T 100-107)

So it is clear that Crespo saw the significance of this call in the fact that Shaffer was listening in as the Respondent "probed" for information. But in reality this ten-minute call involved only the Respondent and [REDACTED].

One cannot rule out the possibility that the Respondent "probed" [REDACTED] in

that call but even if he did there is no indication that he ever communicated the information to Shaffer. The value this call had to the Department's case was if Shaffer was on the line—which we now know he was not.

The testimony did not provide the telephone numbers of UC 5601 or Charlson so the Court could not pinpoint their calls in the telephone records.<sup>22</sup> But we know that at some point on December 12, 2007 Shaffer called UC 5601 to cancel the bet and UC 5601 then spoke to [REDACTED] and learned of the video. Charlson also spoke to [REDACTED] and learned about the Respondent.

There was a ten-minute call at 7:58 am between [REDACTED] and Shaffer which might well have been about "probing" for information and "feeling" someone out. It is possible that the [REDACTED] learned of the security video on which UC 5601 could be seen during that conversation, which would be consistent with the Respondent's theory of how Shaffer knew.

It is also possible that [REDACTED] came to his "belief" about the Respondent having informed Shaffer as a result of that call. But that raises a more fundamental problem with the Department's theory. [REDACTED], who was repeatedly described as a reliable informant, did not call and notify UC 5601 or Charlson on December 11, 2007, the day he allegedly learned that the undercover was compromised. The Department offered no explanation for this. On the other hand the call on the morning of December 12, 2007 provided an opportunity for the transfer of information which was the subject of calls later that day.

The records also show that Shaffer called [REDACTED] at 1:22 pm for 2 minutes

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<sup>22</sup> In an effort to resolve this, at a post trial proceeding, the Court was provided with that telephone number and using the records in evidence it appears that the call was made at 2:08 pm.

which could have been when he actually confronted him—but again we do not know.

Looking at the phone records there is some support for the Department's theory but there is at least as great or greater likelihood that they support the Respondent's. The Department's repeated reliance on the telephone records as supporting its case is without basis or merit.

h) [REDACTED]

It is now necessary to go back to the Department's closing argument on the issue of [REDACTED] credibility. On that issue the Department claims:

Additionally, Detective Crespo testified that at the conclusion of Mr. [REDACTED]'s interview he told him that his admissions could lead to the removal of his service firearm. After being informed of this, response, Mr. [REDACTED] promptly indicated to Detective Crespo, in no uncertain terms that he would have never given the interview in the first place had he known about the possibility of having his gun removed. What can be reasonably inferred from Mr. [REDACTED]'s reaction that he never would have taken the fall for Respondent if he knew that he would adversely affect him. Thus, Respondent's attempt to bolster his defense by having Mr. [REDACTED] take the fall, as a retired member of the Department should be completely discounted. (Department Closing 28)

It is certainly true that if [REDACTED] were lying to Crespo he would have probably been upset when Crespo told him that he might lose his gun permit. It is also reasonable to assume that if [REDACTED] were telling the truth he would be upset when Crespo brought up the possibility that he would be losing his gun permit. There is a logical nexus between the possibility of [REDACTED] sing his gun permit and his being upset. There is no logical reason to assume that his being upset was an admission that he was lying to protect the Respondent.

When the issue of the gun permit came up [REDACTED] didn't say that he had been lying up to that point and was now ready to implicate the Respondent, which is certainly

something that might have happened when he learned he might lose his gun permit.

What he said was that he was sorry he had spoken to Crespo at all. There is no evidence in that statement or [REDACTED] s anger about the gun permit that establishes him to have lied to protect the Respondent.

The statement [REDACTED] made does indicate that he used his knowledge as a former police officer to tell a possible criminal—Shaffer—how to avoid apprehension. This is reprehensible and this Court brooks no sympathy for [REDACTED]. However other evidence in the case such as Shaffer's testimony and, more importantly, the video provide corroboration of it as having been truthful.

i) [REDACTED] III

There is another alleged link between [REDACTED] and the Respondent. While the issue was not fully examined during the trial, it did come up in the course of both direct and cross-examination of Carione and therefore merits some mention.

In March 2008, Shaffer was arrested for the bets he took in December 2007. The arrest apparently took place in one of the bars and someone overheard an officer tell Shaffer that they were looking for information about the Respondent.

Shaffer did not go through the normal arrest process but was taken to IAB headquarters in Brooklyn where he was questioned about his connections to the Respondent. The testimony before this Court does not indicate how long Shaffer was held (he described it as being kidnapped) but apparently some of his cohorts were looking for him.

At some point [REDACTED] called Santangelo and told him that information was being sought from Shaffer about the Respondent. Santangelo called the Respondent who in

turn called [REDACTED]

Carione testified that he found it highly suspicious that [REDACTED] would make a call that would have the effect of putting the Respondent on notice that IAB was looking into him particularly since [REDACTED] and the Respondent ostensibly did not like each other.

Sometime after that [REDACTED] went to the 120 Precinct looking for Shaffer who was still in custody.

Carione initially testified that the visit to the 120 Precinct by [REDACTED] was the result of the call from the Respondent but he later acknowledged that the two events were not linked. In any event Shaffer wasn't at the 120 Precinct.

Carione had a good point; it is, on its face, suspicious that [REDACTED] would call Santangelo who he probably knew would tell the Respondent. It is, however, unsurprising that the Respondent would have had [REDACTED]'s telephone number because he used to work on the Respondent's team. It is equally unsurprising that he would try to find out what was being said about him.

Why did [REDACTED] make the call? We don't know. Maybe he was trying to ingratiate himself to someone who was still doing enforcement at the bars. Maybe he thought it would help locate Shaffer, whom [REDACTED] was apparently still looking for. But if [REDACTED] and the Respondent were really working together for Shaffer it is not clear why [REDACTED] would have called Santangelo rather than calling the Respondent directly.

In the end this event adds to the complexity of this case but sheds little light on the issues.

j) The Summons

[REDACTED] had told Carione that the Respondent did not issue summonses to bar

owners but only to patrons. Carione discovered that this was not true as Shaffer and [REDACTED] had received summonses. Carione then claimed that the Respondent issued more summonses to customers than to Shaffer. However based on the stipulation entered into by both parties the Respondent issued twice as many SLA summonses to Shaffer (6) as to customers (3) in the period from October through December 2007.

Another level of argument was raised in that it was claimed that all of the summonses against Shaffer were dismissed in Criminal Court. Additionally there was reference to the fact that there is an ongoing investigation regarding the summonses.

The results of that ongoing investigation were not made known during the trial and therefore cannot enter into this discussion. It is worth noting that how cases are resolved in court is not always easily related to what occurs in the field. For instance Shaffer, the owner of two troublesome bars, was allowed to plead Guilty to a violation after accepting two bets from UC 5601.

Moreover, counsel for the Respondent has argued that the summonses which were described as having been dismissed were returnable to Criminal Court and do not reflect the dispositions on the SLA summonses issued by the Respondent which are returnable to the agency.

The evidence before this Court regarding the summonses does not constitute proof of collusion between the Respondent and Shaffer.

k) UC 5601

There is no question that UC 5601 gave different testimony on the issue of whether he worked with a "ghost" during his visits to [REDACTED] and [REDACTED]. When he first testified on the Department's case on November 18, 2008, he stated that

Raddicone was not with him on December 11, 2007 and that there were undercover officers that accompanied him (T 603). He further stated that he usually did not work with "ghosts" in bars (T 621). When he returned to the witness stand on the Department's rebuttal case on January 9, 2009, UC 5601 indicated that he had worked with a "ghost" on November 14, 2007 (T 1158) and that the "ghost" was Charlson (T 1161). He also testified that Charlson was his "ghost" on December 11, 2007 (T 1170 - 1171).

As to November 14, 2007 there is a little problem as his earlier testimony did not address that date beyond the broad statement about bars. As to December 11, 2007 there is a direct conflict between the two sets of testimony. There is no easy way to reconcile these two versions of events and the Department does not even mention this obvious issue in its closing argument. This Court has accepted the second version because it appeared, on the whole, that UC 5601 was correcting his earlier testimony and also because of the specificity he provided as to who was with him.

While there is some dispute as to whether Shaffer's girlfriend was actually in the bar on November 14, 2007 it is clear that she was arrested. Indeed Shaffer testified that his girlfriend was not in the bar at the time and was only arrested when she went in to complain about the raid. But Shaffer also testified that she saw the officers during the processing of the case and Charlson was part of the operation that day.

Shaffer also testified that his girlfriend saw the "ghost" on December 11, 2007 as someone who had his head down while he ate mozzarella sticks. UC 5601's second appearance on the witness stand places Charlson in the bar that day.

All of this provides corroboration of the hearsay testimony by Shaffer that his

girlfriend recognized Charlson as the "ghost" on the video.

It should be noted that UC 5601 said he viewed the video and did not see Charlson but the Department conceded that Charlson was indeed on the video (T 1133) and was pointed out to the Court which notes that he was seen on the video for an extended period of time.

1) Shaffer

Much has been made about whether Shaffer's testimony was rehearsed. It is perfectly appropriate under our system for attorneys to speak to a witness prior to testimony. What is prohibited is suggesting to the witness what he or she should say. There is no evidence that that occurred. Nor is there any evidence that the manner in which he testified demonstrated a close relationship with the Respondent as the Advocate claimed (Department Closing 25).

Indeed the Department uses phone calls as the basis establishing that close relationship. The testimony of both Shaffer and the Respondent indicates that there had been some limited telephone contact in the past. The Respondent claimed that he gave his telephone number to Shaffer in conjunction with his responsibilities as condition sergeant, something he did with other bars as well. There was no testimony to challenge this nor was there testimony that this was inappropriate. The fact that Shaffer had the Respondent's telephone number and made some calls to him is not evidence of any misconduct or of a relationship.

Indeed, we have telephone records which show that over a four-month period there were no phone calls at all between these two.

There was testimony at the trial that the Respondent denied having phone contact

with Shaffer and that the Respondent lied when he said that. It came from Crespo on the first day of the trial. Crespo's conclusion was based on phone calls we later learned never occurred. In particular he referenced a call that he believed had occurred March 7, 2008 a few days before the Respondent's Official Department Interview on March 10, 2008. He cited this call because the Respondent denied having recent contact with Shaffer, which according to the corrected evidence, was true.

Another part of the Department's assertion that the Respondent has a close relationship with Shaffer was found in the closing argument where the Department claimed that: "Mr. Shaffer, through his employees reached out to Respondent after his arrest" (Department Closing 25). This is not supported by the evidence. The testimony presented by the Department's own witness, Carione, was that [REDACTED] did not learn from Shaffer who was in custody. The Department's witness, Santangelo, indicated that

[REDACTED] learned of Shaffer's arrest from someone who was in the bar at the time and overheard an officer tell Shaffer he would be let go if he gave up the Respondent [REDACTED] who did work for Shaffer, called Santangelo who called the Respondent. The claim that Shaffer caused this to happen is not only unsupported by the evidence but is contrary to it.

Both sides agree that Shaffer runs several bars that are in less than good repute. It is unquestioned that he took several illegal bets in these bars and there were apparently discussions in his bars about the purchase of cigarettes which were presumably untaxed. Additionally, the Respondent testified that Shaffer had a hidden room at [REDACTED] which he used for underage drinking. Certainly these are negative factors regarding his credibility which demonstrate his willingness to put his own interests above the law.

On the other hand his testimony about how he learned that "Pete" was an undercover officer is corroborated by the video. The fact that the video was the source of the information is corroborated by UC 5601 who said that [REDACTED] told him he was captured on a surveillance video. It is certainly unlikely that UC 5601 colluded with Shaffer and so there is independent corroboration indicating that Shaffer knew on December 12, 2007 that UC 5601 was on his store surveillance video.

Moreover, as has been noted, UC 5601 placed Charlson in the bar on November 18, 2007 and more significantly he placed Charlson in [REDACTED] on December 11, 2007. This would add credence to Shaffer's claim that his girlfriend recognized Charlson as a "ghost" when she viewed the video in the early hours of December 12, 2007.

In the end Shaffer's testimony as to how he learned of the investigation is credible because it is supported by other evidence.

m) Non-appearance by [REDACTED]

Several proposed witnesses, for both sides, did not appear at this trial. In the Department's closing and the Respondent's rebuttal closing the issue of why one of those witnesses, [REDACTED] did not appear was the subject of debate.

The Court made clear during the trial that it would not consider the reasons why witnesses did not appear in evaluating their hearsay testimony and even had the Respondent redact such explanations from affidavits he put in evidence from several such witnesses.

The Department and the Respondent have offered competing views of why [REDACTED] did not come. To attempt to determine why he did not appear would involve this Court into consideration of a collateral issue based on hearsay. Suffice it to say, none

of the witnesses who failed to appear in this case did so because it was impossible for them to appear. All of them, with the possible exception of Jones who was here and could not remain, made a decision not to appear.

With regard to [REDACTED] and each of the other absent witnesses, the Court permitted the parties to present hearsay evidence. The Court did not accept or reject that hearsay based on the failure of a particular witness to appear but on the substance of the evidence offered and its reliability when considered in conjunction with other available evidence.

n) The Video

Counsel for the Respondent has made much about the "fact" that Vice learned of the existence of a video on December 12, 2007 but made no effort to obtain it. Counsel himself asserts that he first learned of the video in December 2008, in the middle of this trial. He also asserts that he turned the video over to this Department at that time. Shaffer testified that he did not disclose the existence of the video until then. There is no reason for anyone to have assumed prior to December 2008 that the video [REDACTED] mentioned to UC 5601 in their conversation on December 12, 2007 referred to anything other than one taken in [REDACTED] either on the 8<sup>th</sup> or 11<sup>th</sup> of that month.

Some evidence of this is found in the fact that UC 5601 is the only one who seemed to take note of the fact that a video was mentioned on December 12, 2007 and he was concerned about it because his face could be seen on it. Consequently that argument, for whatever bearing it has on the issues in this case, is unpersuasive.

With regard to the claim that officers can be seen taking money on that video, the Court finds it unnecessary to address that issue within the context of this case. First,

there is no evidence that Charlson knew there was a video made of the November 14, 2007 raid. As previously noted, if Charlson knew that there was such a video, he likely would not have called IAB. Further, that allegation, the Court presumes, is the subject of another investigation.

o) Sequence of Calls on December 12, 2007

In her closing argument the Advocate states: "Lieutenant Charlson also relayed to IAB that his undercover had received a phone call from Mr. Shaffer saying that he did not want to deal with the undercover any more. Mr. Shaffer made this call to the undercover after Mr. [REDACTED] had informed Lieutenant Charlson about the leak" (Department Closing 12).

Looking at the full testimony given by Charlson it is not clear what he was actually saying about the sequence of events (T 570 – 572). It appears that when he called IAB he told them about both issues.

More significantly the Department does not address the testimony by UC 5601 on this issue. He testified that he got what he described as a "weird" call from Shaffer cancelling the bet. After he hung up he called Charlson. Then he "wanted" to see if [REDACTED] called him. At some point he called [REDACTED] and left a message. He said he believed he got a call back "a couple of hours later."

UC 5601 then testified that [REDACTED] told him that Shaffer thought UC 5601 was a cop and that they he knew that there were police operations in the bar. He also told UC 5601 that they had him "on video in the bar on the security cameras" (T 604-605).

The Department has therefore presented two different versions of the sequence of phone calls that day. Neither version really aids the Department as according to its

theory [REDACTED] learned that the investigation was compromised on the morning of December 11, 2207, a full day before any of these calls.<sup>23</sup>

p) Phone Records III – Postscript

The Department did not explain to the Court how the non-existent phone calls wound up in the Penlink records which were placed in evidence at the outset of this trial. Nor did the Department offer any explanation for the replacement records or how they were different than the originals. For instance, Shaffer's records went from ten pages to just one page (DX 4 and DX 4A) while [REDACTED] s went from two pages to over 25 pages (DX 3 and DX 3A). As noted, there was no testimony regarding the significance of the phone records after the error was acknowledged.

Looking at the original phone records it is easy to see why the Department was so convinced that the Respondent was working with Shaffer. The phone calls involving the Respondent and Shaffer seemed to pop up at critical times such as when the undercover gambling activity occurred and on the day Shaffer was arrested. Certainly they clouded the evaluation of evidence in this case.

But looking at the records with those calls eliminated also leaves activity that was, at least as far as this trial is concerned, unexplained. For instance, the five alleged three-way calls between December 8, 2007 and December 12, 2007 were in fact two-way calls between the Respondent and [REDACTED] They still pop up at critical junctures in the

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<sup>23</sup> In an attempt to untangle this, the Court called a post-trial session on February 17, 2009 and asked the Department to provide the telephone numbers for Charlson and UC 5601. Using the telephone records the Court determined that there were several phone calls between Charlson and [REDACTED] and there were several phone calls between [REDACTED] and UC 5601 on December 12, 2007. The likely sequence is that UC 5601 called [REDACTED] at 1:26 pm and left a message as he described. [REDACTED] called Charlson at 1:25 pm and then UC 5601 at 1:26 pm. The time the log was called into IAB might be able to confirm or discredit this but that is well beyond the scope of this proceeding.

case. There were two calls on the morning of December 8, 2007, the day [REDACTED] accompanied UC 5601 to [REDACTED] and placed a bet with Shaffer over the telephone. The next call between these two is on December 11, 2007, the day UC 5601 went back to [REDACTED] to pay for the first bet and to make a second bet. The next morning [REDACTED] called the Respondent at 7:29 am in a two-minute call and they spoke again that day at 1:37 pm for nearly ten minutes.

This Court has already noted that there is no evidence to establish that the Respondent communicated anything to Shaffer but these phone calls do leave open the possibility that the Respondent and [REDACTED] discussed the undercover operation. Further there is no evidence that the Respondent knew any of the details about the undercover investigation but clearly [REDACTED] did. So there is a possibility that [REDACTED] did discuss the investigation with the Respondent and that the information flowed from [REDACTED] to him. It must be stressed that there is no evidence of this but on the other hand there is no indication that anyone asked about that possibility.

Additionally, according to the records in evidence there were in excess of 30 telephone calls between [REDACTED] and Shaffer which occurred during the period after Shaffer learned that [REDACTED] had introduced him to an undercover police officer and up to the time of Shaffer's arrest.

There was testimony that [REDACTED] was told by Carione not to speak to Shaffer and that the phone records reveal that he did not follow those instructions. The explanation offered by [REDACTED] to Crespo, that if he did not speak to Shaffer he would become suspicious, makes no sense particularly in light of the fact that almost all of these calls were initiated by [REDACTED]. All of this leads to the possibility that we do not know

the full nature and extent of [REDACTED] e's relationship with Shaffer or for that matter his relationship with the Respondent.

Above all else, it means we know little about [REDACTED] and what motivated his various actions. He is, after all, someone who told and then recanted a story about the Respondent taking protection money from Shaffer.

#### Conclusion as to Specification No. 5

On the whole, the Respondent's version of how Shaffer found out about the undercover operation seems to make sense and comports with other information such as the fact that "Pete" can be seen on the video and the statement by UC 5601 that he was told he was on video.

This issue before this Court is not whether the Respondent has established his version of events but whether the Department has established its case by a preponderance of the evidence. It has not.

The Department's theory of when and how the Respondent "divulged" to Shaffer the existence of the undercover operation is not based on anything that might be regarded as substantial evidence. It is based on hearsay, conclusions unsupported by evidence and assumptions that do not make sense. Additionally, imbedded in the Department's arguments are conclusions drawn from the non-existent phone calls.

The Respondent is found Not Guilty of this specification.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 21, 1985. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Because the Department has recommended a penalty of termination and because this Court disagrees with that recommendation, it is important to take an overview of the case. While it would be simple enough to say that this Court has found the Respondent Not Guilty of the most serious offense, disclosing the existence of an undercover officer, and that the other charges do not merit termination, that would not, under the circumstance of this case, suffice. The Department set forth a view of the Respondent that would require termination even on the lesser charges upon which he has been found Guilty.

In her opening statement to this Court, the Advocate asserted: "The evidence will show that between January 1, 2006 through March 10, 2008, Sergeant Lewis improperly bullied and intimidated hard-working citizens and small business owners in the community he swore to serve and protect. The evidence will also show that Sergeant William Lewis through his use of coercion and threats created and maintained private contractual relationships with the same establishment where he and his officers conducted enforcement duties." The broad allegation that over an extended period of time the Respondent bullied a number of merchants is not reflected in the charges, let alone the evidence.

There was one allegation of intimidation involving one merchant, [REDACTED] on a single day. Despite canvassing merchants in the area no other complainants were found.

The statement about using coercion and threats to create and maintain contractual relationships seems to refer to Shaffer because he ran establishments where the Respondent and his officers had enforcement duties. There is no evidence that the Respondent bullied Shaffer to obtain a pest extermination contract.

Along these lines the Department also claimed that the Respondent used his "influence to secure a bartending position for his own sister at one of the bars where his team conducted enforcement duties." This came up again in the Department's closing argument where it is asserted that the Respondent "ensured" that his sister received a position at one of Shaffer's bars. While the Department may believe that to be true it has presented no evidence to support that claim. Further, the Respondent was not charged with abuse of authority or anything else in connection with his sister getting the job but with failing to report that fact to a superior.

Some of the charges which this Respondent has been found guilty of do constitute serious misconduct but they do not rise to the level of corruption and misuse of authority claimed by the Department.

[REDACTED] was crystal clear that the Respondent never introduced himself as a police officer nor did he ever attempt to use, let alone misuse, his position as a police officer. A canvass of merchants in the area failed to turn any evidence of abuse of authority. There was absolutely no evidence before this Court that the Respondent was in any kind of corrupt collusion with Shaffer and the evidence proffered by the Department indicating that the Respondent was in regular phone communication with him turned out to be

simply wrong.

There is no doubt that the Department had every reason to investigate this Respondent. It is obvious that several complaints were made about him that raised serious concern particularly since they came from separate directions.

One complaint was from a tenant he was evicting from the rental property which did not directly result in any charges but apparently did alert the Department to his ownership of the rental property. Another was from [REDACTED] partner, [REDACTED] The third was the alleged claim by [REDACTED] about his divulging the informant. The Respondent's counsel has argued that these complaints stem from his personality.

While this Court cannot know all the motivations behind why people might complain the Court did observe that the Respondent is a large, well built man with a stern demeanor. When he testified almost all of his answers were delivered in an authoritative voice as though he were giving a command. Shaffer described him as a "hard-ass" and the description seemed apt. [REDACTED] noted something about the way the Respondent "talks," in an apparent reference to his gruff manner (DX 1B 16).

His demeanor might have given rise to complaints and the Respondent, by dint of the blurry lines he created between his police work and his outside business interests, certainly made himself look suspicious.

But for a Court to act there must be evidence. While the Department may firmly believe all of the very serious allegations of corruption and thuggery that it has made it needs to provide proof—which it has not done in this case. Moreover, judging from what occurred in this proceeding, some of what the Department believes is based on unsubstantiated allegations and/or discredited evidence.

While all violations of Department rules are serious, some of those for which the Respondent has been found Guilty do not rise to the highest level of seriousness.

One specification for which the Respondent has been found Guilty involves a 30-day lapse in his off-duty employment authorization. It is unquestioned that he had off-duty employment for a number of years without issue. He has admitted to this and his explanation that the clerical person who usually reminds him did not do so this time seems credible given that there are no other lapses in his authorizations.

His failure to file a change of address form appears initially to be more problematic as the first address he failed to provide was the rental property. There is no evidence that he was hiding anything as the fact that this was a rental property would not have been disclosed on that form.<sup>24</sup> Moreover, there is no apparent reason to conceal the address where he lives with his girlfriend and he failed to file a change of address with regard to that address as well.

There is no doubt that these are violations of Department rules but they do not seem to reach the level of misconduct claimed by the Department which characterized these acts as "serious misconduct" for which he was "unapologetic" and which demonstrated that he had "no regard for those responsibilities that mattered most."

The remaining specifications on which he has been found Guilty deal with conflicts of interest and the appearance thereof and they are quite serious as they undermine confidence in the honesty and integrity of the Department. Certainly the Respondent had tin ear on this issue. For instance it is undisputed that he would conduct police enforcement activity in the bars wearing his All Platinum shirt or jacket. He could

<sup>24</sup> The PD 451-021 form (Change of Name, Residence or Social Condition) which the Respondent failed to file does not call for the member to indicate if the building in which he/she resides is a rental or ownership property nor does it call for information regarding the number of apartments or tenants in the building.

not have done more to blur the line between his private enterprise and his police work. His failure to advise the Department about his sister's employment at [REDACTED] gave an additional appearance of impropriety as it became known only through an investigation. These actions left the Respondent open to charges of misconduct including corrupt conduct which was and is detrimental to the perception of this Department by the public.

On the other hand there is before this Court no evidence of corrupt or inappropriate behavior in connection with his enforcement duties. He issued summonses, apparently closed down bars and got good ratings from his supervisor who described his job performance as "excellent."

Based on all of the above, I recommend that the Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the Force at the Police Commissioner's discretion and may be terminated at any time without further hearing. I further recommend that the Respondent forfeit the 30 pre-trial suspension days already served.

Respectfully submitted,

  
Martin G. Karopkin  
Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT WILLIAM LEWIS  
TAX REGISTRY NO. 885949  
DISCIPLINARY CASE NOS. 82103/06, 82873/07 & 83810/08

The Respondent was appointed to the Department on January 21, 1985. His personnel file indicates that he has received ratings of 3.5, "Competent" to 4.5, "Extremely Competent" over the course of the past three years.

The Respondent has received 11 medals, ten of which were for excellent police duty and one for meritorious police duty.

The Respondent's personnel file reflects one prior disciplinary adjudication in 1993 for striking a handcuffed prisoner, the disposition of which is not clear.

For your consideration.



Martin G. Karopkin  
Deputy Commissioner – Trials